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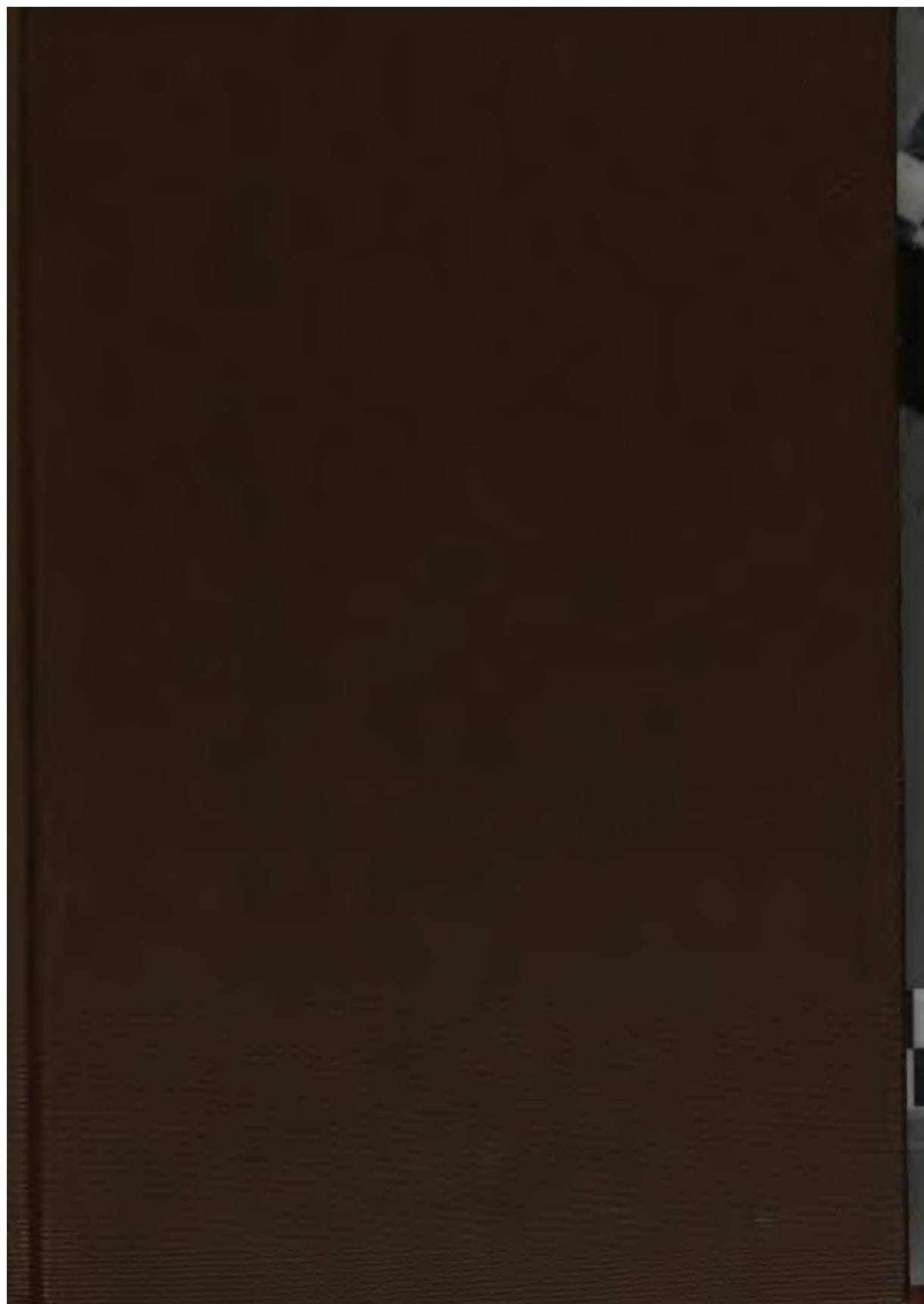
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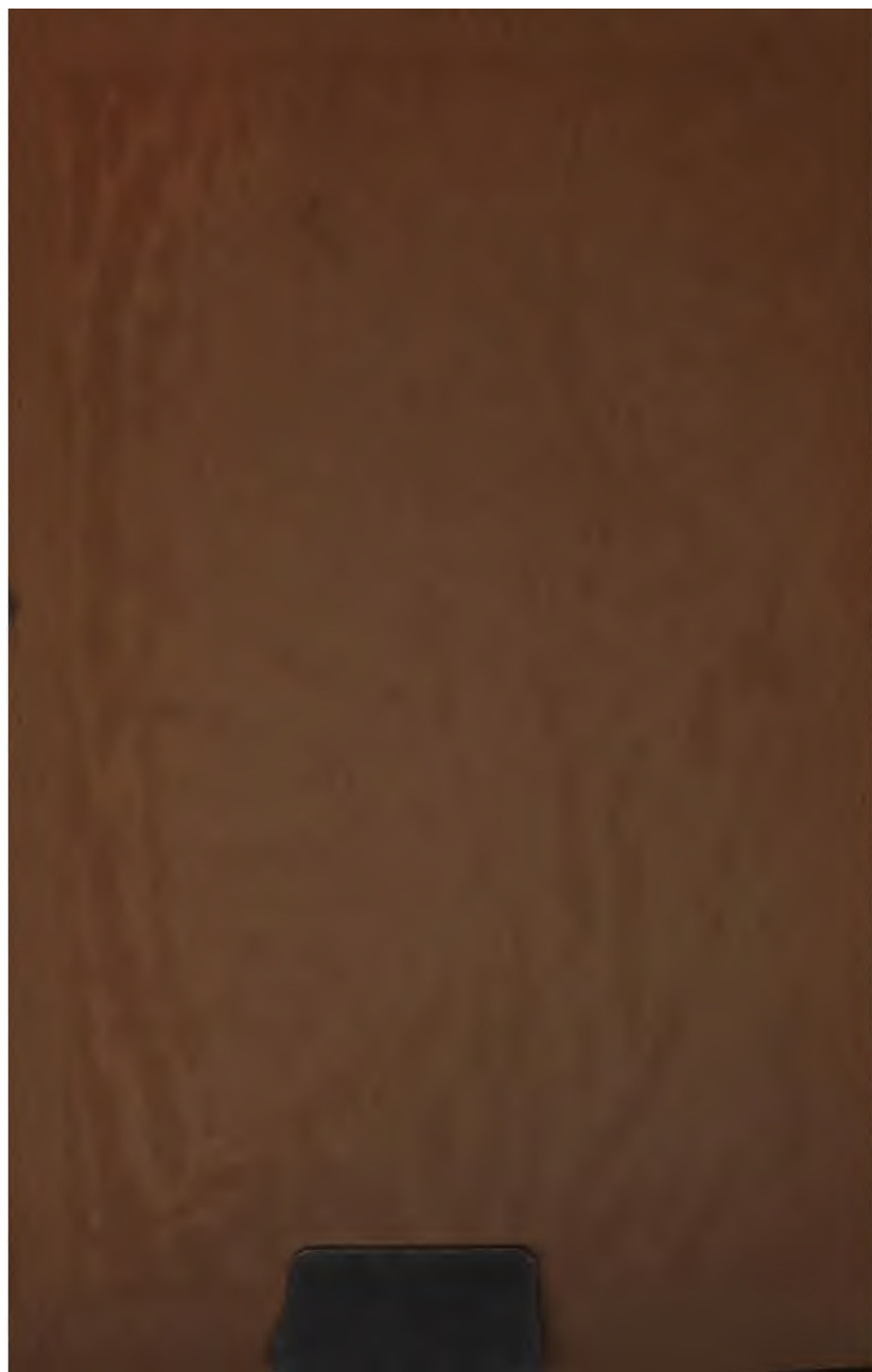
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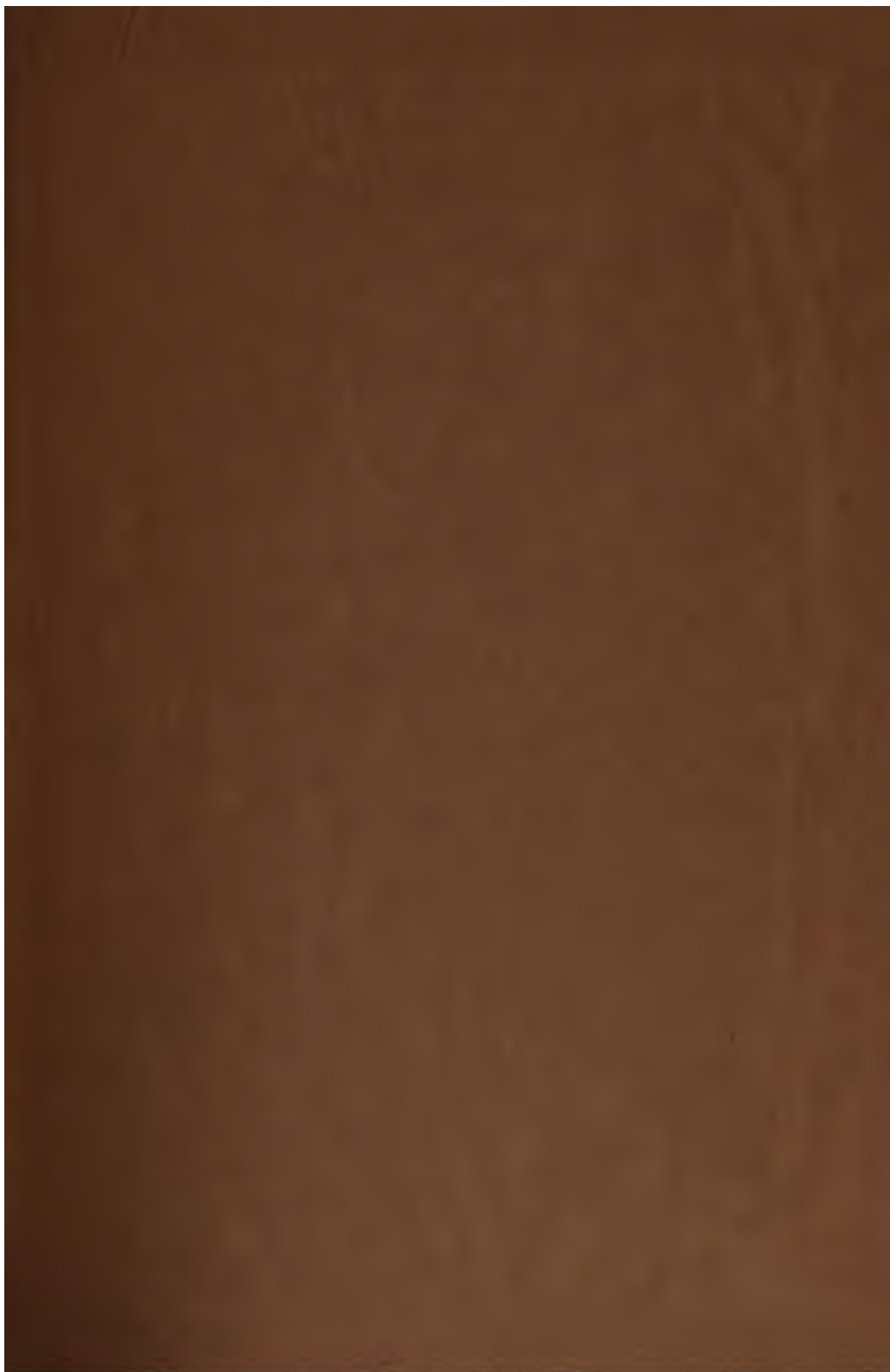
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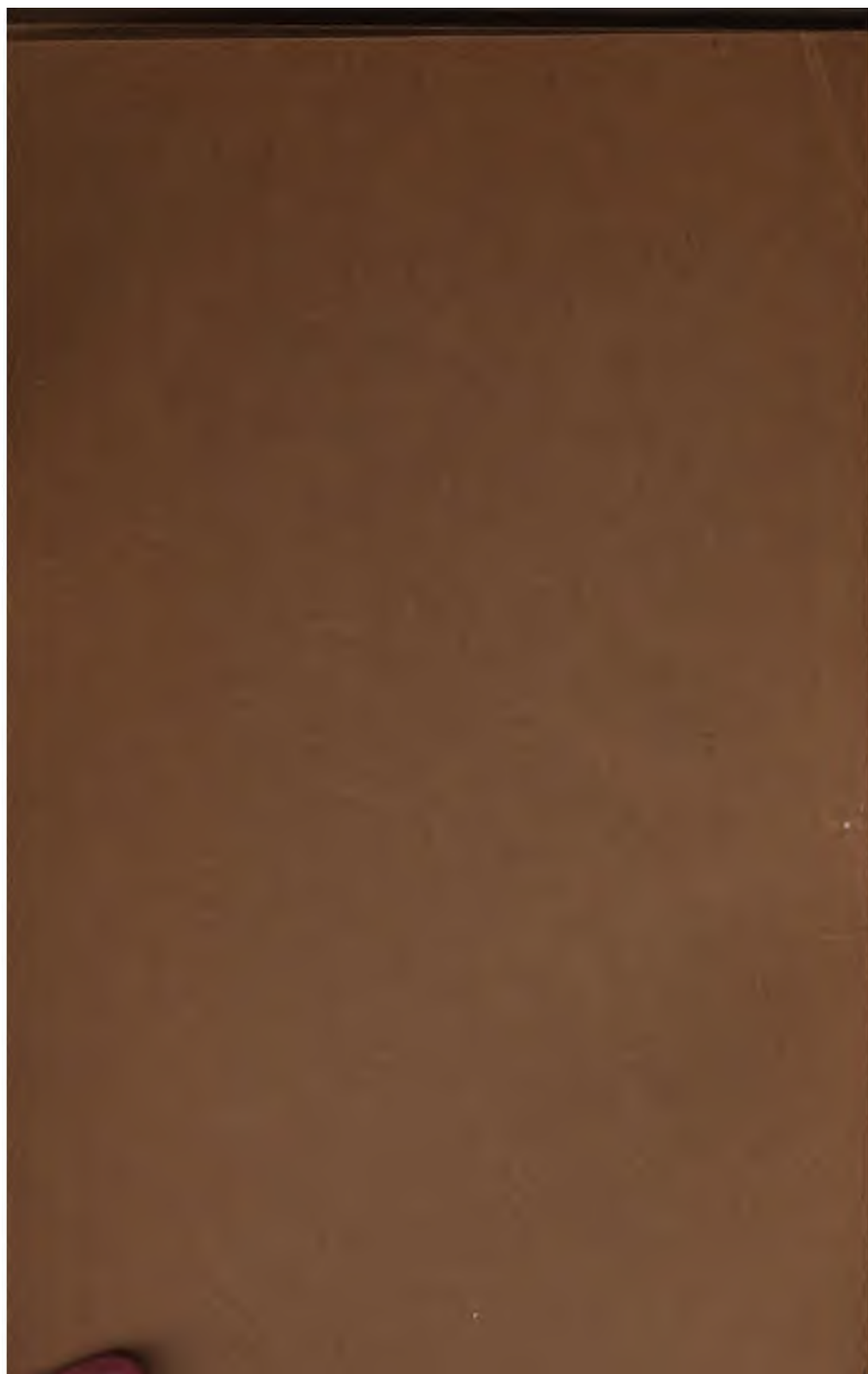
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**THE LEGAL AND POLITICAL  
STATUS OF WOMEN IN IOWA**



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# LEGAL AND POLITICAL STATUS OF WOMEN IN IOWA

AN HISTORICAL ACCOUNT OF THE RIGHTS  
OF WOMEN IN IOWA FROM 1838 TO 1918

BY  
RUTH A. GALLAHER

SUBMITTED TO THE FACULTY OF THE GRADUATE COLLEGE OF THE STATE  
UNIVERSITY OF IOWA IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE DEGREE OF DOCTOR  
OF PHILOSOPHY

PUBLISHED AT IOWA CITY IOWA IN 1918



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## EDITOR'S INTRODUCTION

It is apparent that the spirit of democracy which brooded over the enfranchisement of men without regard to rank, religion, or property has inspired the movement for equality of legal and political status without regard to sex. The history of the legal and political status of women in Iowa from 1838 to 1918 is typical of the development of the movement in the United States.

BENJ. F. SHAMBAUGH

OFFICE OF THE SUPERINTENDENT AND EDITOR  
THE STATE HISTORICAL SOCIETY OF IOWA  
IOWA CITY IOWA



## AUTHOR'S PREFACE

IN the preparation of this monograph the writer has attempted to present a general survey of the status of women in Iowa by pointing out the distinctions between men and women which have been established by law or sanctioned by judicial rulings. The status of women with reference to activities which are not regulated either directly or indirectly by the government is outside the scope of this monograph and is not discussed in these pages. Thus the position of women in religious and other similar organizations has not been considered since this does not concern their status as citizens.

Furthermore, all laws of a general nature applying equally to men and women have received only incidental mention, although such laws are often of vital importance to women. In this class belong the laws concerning public utilities, protection of life and property, public health, and municipal administration. Unless otherwise specified or plainly inapplicable to both sexes, Iowa statute laws governing civil rights and obligations may be assumed to apply equally to men and women. Laws concerning political matters, on the contrary, refer to male citizens only unless women are specifically included.

In some cases it has seemed advisable to include a brief discussion of certain aspects of the status of women which show little or no legal discrimination against women. Thus the admission of women to the public schools, to institutions of higher education, and to the professions has been discussed, although the Iowa laws show but little difference between men and women in such matters. There are two reasons for including these subjects: first, because such privileges are largely furnished at the expense of the State; and secondly, because the equality which has prevailed in Iowa is by no means general throughout the United States and ought not to be taken for granted. Teaching has been included for the same reasons, and also because the teacher in State supported schools is in one sense a public official.

In this study of the various aspects of the status of women in Iowa it has been necessary to consult such sources as the session laws of Iowa, the codes of Iowa law, and the Iowa Supreme Court reports. These pages, however, are in no sense intended as a contribution to law and jurisprudence: the effort of the writer has been rather to ascertain the principles which have governed the status of women in Iowa and to describe the situation in non-technical language. And in this connection it may be well to explain that since this monograph is limited for the most part to the discussion of the legal and political status of women in Iowa, references to court reports, House and Senate journals, and other public documents refer to Iowa unless otherwise stated.

A history of the status of women in Iowa divides itself naturally into two parts: the political position of women, and their status in civil affairs. Logically, the former should be discussed first, since it is theoretically the source and guarantee of all other rights; but historically the advance of women in civil affairs takes precedence. Consequently, it has seemed advisable to study first the position of women under the Common Law and the gradual evolution of her personal, educational, and property rights. Along with these successive advances has come an almost negligible increase in the actual participation of women in public administration. At the same time women have exerted a very powerful indirect influence in public affairs which has, to some extent, made further progress possible.

It has not been the intention of the writer to portray the men and women of Iowa as hostile classes. The line of cleavage between the advocates and opponents of measures concerning the status of women has usually separated progressives from conservatives — groups in which both men and women are to be found. Furthermore, there is no evidence that injustice to women has been desired by the electorate, although the voters have usually looked upon proposed changes with distrust.

In many respects Iowa is fairly typical of the northern States in its treatment of women. Though less progressive than the western Commonwealths, it has been more progressive than many of the eastern States; and it is far in advance of the South, which still adheres to most of the Common Law rules concerning the position of women — more especially married women.

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Throughout the preparation of the monograph, the writer has been greatly indebted to Dr. Benj. F. Shambaugh, under whose direction the work was carried on, for advice and encouragement and for the final editing of the manuscript. Helpful suggestions and advice were also received from Dr. Frank E. Horack, Dr. Dan E. Clark, and Professor E. A. Wilcox. Mr. V. Diamonon assisted in the verification of the manuscript.

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THE STATE HISTORICAL SOCIETY OF IOWA  
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**PART I**  
**CIVIL RIGHTS OF WOMEN IN IOWA**



## I

### INTRODUCTION: THE COMMON LAW

THE Common Law of England became to a large extent the fundamental law of the English-speaking American colonists; and with certain modifications and adaptations to American conditions, it has been incorporated into the jurisprudence of practically all the States which have been organized since the adoption of the Federal Constitution. Little by little much of the Common Law discriminating between men and women has been superseded by statute law, until now, especially in Commonwealths like Iowa, only in rare cases is the Common Law resorted to in judicial decisions.

Since the Common Law has been in force in Iowa, and is still followed in cases not covered by statute law, it will be worth while to examine briefly such of its principles as dealt with the legal status of women. Indeed, such a study will constitute an historical background for the discussion of the status of women in Iowa. Here only the provisions of the Common Law which distinguished between men and women in the matter of legal rights and privileges will be discussed, although women were directly or indirectly affected by the administration of the general law.

The most striking feature of the Common Law in respect to women was the distinction between those who were married and those who were single. An unmarried woman was, in most respects, legally entitled to nearly all the civil rights and privileges accorded to men: at

the same time, because of her subordinate position in the family and because she lacked the physical force to assert her rights she did not actually enjoy many of the advantages the law gave her. Among these were the right to own property, the right to make valid contracts, the right to act as administrator, and the right to assume other financial obligations on practically the same terms as men. Political rights, except for the Queen, were undreamed of by women in an age when force was the undisputed foundation of political power.

The position of a married woman, or *feme covert* as she was legally termed, was very different in law from that of a single woman. A girl might make a valid marriage contract at the age of twelve, although, by an early statute, a clergyman who performed the ceremony might be fined if the bride was under sixteen and did not have the consent of her father or guardian. In case the girl was wealthy, the husband could be deprived of her property if the consent of the father or guardian was lacking.<sup>1</sup>

By entering into a marriage contract a woman lost her legal personality for the period of the marriage, or during her coverture as the wife's condition was called. Her husband became her baron or lord and she ceased to have a separate existence before the law except under certain conditions. For this reason a husband could make no contract with the wife nor could he give her property, since the Common Law recognized but one person — the husband. Thus, since a person can not make a contract with himself, receive a gift from himself, or give anything to himself, all transactions of the kind mentioned between the husband and wife were invalid.<sup>2</sup>

Furthermore, the Common Law deprived the wife of the control of her real property and she lost even the title to all personal property in her possession, even though it had been acquired before the marriage, which was declared to be "an absolute gift to the husband of the goods, chattels and personal estate of which the wife was actually or beneficially possessed at the time of the marriage, and of all such as shall come to her during coverture."<sup>3</sup>

An exception to this rule was made in the law concerning the rights of the Queen, since she was under no such disability as to property rights or the right to make contracts. The King's wife could sue and be sued alone, might receive a grant from her husband, and was in general treated as a *feme sole*. This was explained as an attempt to relieve the King of the care of his wife's property since he had the care of the state. Another exception was also found in London where custom permitted a married woman to carry on trade and made her responsible for her debts.<sup>4</sup>

For the most part, however, the husband was given at least control of his wife's property and she was entirely disqualified from making any arrangements concerning it. In prescribing the terms of the husband's rights to the wife's property, the Common Law established three general classes with slight variations for each. These may be designated as real estate, choses in action, and personal property in the immediate possession of the owner.

The wife's real estate did not become the husband's while the wife lived, although there were so few restrictions on his control over it that it was his in fact until

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his death if there were children or until the wife's death if there were none and he could sell or lease his interest in the property without the wife's consent. The right of the husband to the wife's property after her death, if he survived her, was generally called a title by curtesy and began as soon as a child was born alive. Before this, in feudal times, the husband and wife were both to do homage for the wife's lands; but after the birth of a child the husband, as the guardian of the heir, could do homage for it alone. Some peculiar exceptions to this rule are to be found in the early Common Law treatises. For example, a husband had no title by curtesy in the real estate of his wife if she were an idiot, for then she was under the guardianship of the King. Furthermore, the child must be capable of inheriting the mother's estate, for, if only a male heir was entitled to it, the birth of a daughter conveyed no right to the husband.<sup>5</sup>

A second class of property was that in the immediate possession of the wife at the time of the marriage — such as clothing, jewelry, and house furnishings. These became the husband's absolutely and could be sold, taken for the husband's debts, or destroyed by him without the wife's consent. The wife's clothing and jewelry, designated as her "paraphernalia", could not, however, be willed away from her, and she secured possession of them at the death of the husband provided he had not sold or given them away while he was alive or his creditors did not take them for his debts if he became insolvent.<sup>6</sup>

Another kind of property was usually designated as choses in action. This consisted of notes, bank stock, or other chattels not in the immediate possession of the owner. The husband was entitled to the absolute owner-

ship of these by Common Law, if he reduced them to possession during the marriage. If he required the aid of the courts of equity in securing possession of such property, it was necessary for him to make a reasonable provision for the wife; otherwise she had no right to it or to the profits from it. Even this exception was barred if the wife was found guilty of adultery. The wife's personal property was subject to the husband's debts and was forfeited by his crimes.<sup>7</sup>

A married woman could not dispose of her personal property either by sale or will without the consent of the husband, although the latter right might be secured by an antenuptial agreement. She could not act as an administrator without her husband's concurrence; nor could she make a contract, although she could bind her husband for necessities — a power which was lost if the wife left the husband without cause. It is evident that this rule was not interpreted in favor of the wife, for it was once decided that the wife was not justified in leaving her husband's home even when he introduced an immoral woman into it.<sup>8</sup>

A wife could purchase an estate, however, without the consent of her husband, provided he did not definitely forbid it; but after the husband's death either the widow or — if she were dead — her heirs might avoid the contract unless it had been reaffirmed after she had become a widow. "But the *conveyance* or other contract of a feme-covert", declares Blackstone, "(except by some matter of record) is absolutely void, and not merely voidable". In this respect a wife was at a greater disadvantage than a minor, who merely had an opportunity to avoid his contracts upon coming of age. At the death of



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the wife, the husband had the exclusive right to act as administrator of her estate.<sup>9</sup>

In addition to the control over the wife's property, the husband was entitled to her company and services. He could collect her wages just as he could those of a minor child, and persuading or even assisting a wife to leave her husband was punishable by fine and imprisonment. The woman's consent made no difference in the guilt of her abductor or protector, since she had no legal power to consent. Indeed, in ancient times it was unlawful for a man to take another man's wife to his home even though she needed care and protection. He might, however, take her to the market, to the justice court, or to the spiritual court to sue for a divorce.<sup>10</sup>

Moreover, the husband was entitled to collect the damages for injuries to the wife whether malicious or accidental. In all cases involving acts preceding the marriage the wife was joined with the husband, and it was also necessary that she be joined with him if the suit was for damages to her person or character when the occasion arose after the marriage. The husband might include the wife in suits arising after marriage if they were concerned with property or contract rights but suits for damages because of medical expenses or loss of services could be brought in the name of the husband only. In any case the damages belonged to him and the wife had no claim upon them unless he died before the suit was decided or the judgment paid. If the wife was included in the suit and the husband died before the decision was rendered, she might continue the proceedings, but if not, the suit was dropped. In case the husband died after the decision of the case but before the payment of the sum

awarded, it went to the widow if she was a party to the suit, but to the husband's administrator if he sued alone. If the injury produced instant death, however, the husband could not recover damages for his right to her society ended at her death; nor could the husband recover for the wife's injuries if she died before the case was decided. This claim was not reciprocal and the wife could not recover damages for any injuries to her husband; for if he lived, he was expected to prosecute the suit and if he died her interest ended at his death.<sup>11</sup>

On the other hand the husband assumed certain responsibilities at the time of the marriage. He was required to support his wife and children in a manner consistent with his position in life; and he assumed the wife's debts incurred before marriage. No such responsibility rested upon the wife since she legally ceased to exist at the time of the marriage and her property passed into her husband's possession. As a result she was held responsible for nothing except obedience to her husband and for certain crimes. The husband could not escape his obligation to provide for his wife even by issuing a public statement that he would refuse to pay bills contracted by her; but this advantage the wife lost if she left her husband without cause, and in practice this rule compelled her to submit to almost any form of cruelty, for the courts seldom admitted that her plea was sufficient justification.<sup>12</sup>

The husband was likewise responsible for the torts committed by the wife either before or after marriage so long as both were alive; but a person injured by the wife could not recover from the husband after the wife's death. If the husband died before judgment was ren-

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dered, the wife again became responsible for her acts and could be sued as if she had not been married.<sup>13</sup>

Even criminal misconduct on the part of the wife was usually excused on the theory that subjection to her husband made her merely his agent and consequently if he were present when the crime was committed and influenced her to commit it, the woman was not punished although the husband was held liable if he participated in the act. The law presumed that the wife was coerced and did not act voluntarily unless it was proven otherwise. Some crimes, however, were not included in this immunity. For example, a married woman who killed or attempted to kill the King was guilty of treason, even though her husband ordered her to commit the deed, for her allegiance to the King was superior to the duty she owed her husband. The husband was indeed the "baron" and the wife his subordinate, but his right ceased when he became false to his sovereign. Moreover, it was petit treason for a wife to kill her husband even when they were living apart under a limited divorce. For crimes of this degree women, if convicted, were sentenced to be burned alive. Murder and manslaughter committed by a woman even in the presence of the husband were felonies and the guilty person could be punished in spite of the theory that the wife was not responsible for acts committed in the company of her husband.<sup>14</sup>

Coincident with this theory of the wife's lack of culpability, was the *laissez faire* principle of the Common Law concerning domestic affairs which, in practice, gave to the husband the right to control and punish his wife much as he could his children. He could keep her at home against her will, refuse to permit even her relatives

to visit her, and it was sometimes asserted that he could legally chastise her providing he did not use a stick larger around than his thumb.<sup>15</sup>

Neither husband nor wife could, under Common Law rules, be a witness for or against the other; nor could they sue each other except for divorce. A man, however, could bring suit against a woman for breach of promise just as she could against him if he failed to fulfil his contract.<sup>16</sup>

Although a woman could not make a legal marriage contract until she reached the age of twelve, a statute of Elizabeth fixed the age of consent at ten. In this connection it will be of interest to recall that the consent of a married woman, no matter what her age, was of no consequence so far as the punishment of her seducer was concerned, while that of a ten year old girl barred prosecution. Rape was a felony without benefit of clergy. The forcible abduction and marriage or violation of an heiress, whether maid, widow, or wife, was also a felony — but only in case the woman had money and in this case the wife was permitted to testify against her husband.<sup>17</sup>

A further right — and one of the dearest to a woman — was denied to a wife by the Common Law. She had no right to the custody of her own children, for the father was the sole guardian during his life and could appoint a guardian by will to the exclusion of the mother's claim. The parental authority, except in unusual cases, rested entirely in the father even when a divorce had been granted to the wife — it being said that "a mother, as such, is entitled to no power, but only to reverence and respect".<sup>18</sup>

At the death of the husband, the wife, if she survived

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him, received one-third of his real estate for life. This might include property purchased with money received from the wife. She was also entitled to remain forty days in her husband's house. This dower right, as it was called, might be alienated in three ways: if she accepted a bequest by will or a payment in lieu of dower; in case of divorce; or by an antenuptial agreement. She could not, however, contract concerning dower after marriage.<sup>19</sup>

Divorces during this early period in England could be granted only by act of Parliament or by the Ecclesiastical Courts. The divorce by Parliament was said to be *a vinculo matrimonii* and was an absolute divorce. Divorces by the courts were of two kinds. The first was really an annulment of the marriage since it could be granted only for causes which were impediments to a legal marriage, such as consanguinity, and in such cases the children were considered illegitimate. The second, called a divorce *a mensa et thoro*, was a partial divorce and could be granted chiefly for adultery. The wife, if she obtained the divorce, might be allowed alimony, if she herself had not committed adultery.<sup>20</sup> Since the husband always had the right to the children and absolute control over the property of both, the wife had not an equal chance in divorce proceedings, although the law permitted her to sue on theoretically equal terms.

Such, in brief, were the principles of the Common Law which most affected women as distinguished from men. Unjust as many of them appear it is probable that the idea of protesting against them seldom occurred to the women of that day. Many of them lived happy and contented lives, raised large families, and accepted their subordination as both natural and just. Marriage and

the monastic life offered the only careers open to women and as a result girls married early, passing directly from the father's jurisdiction to that of the husband.

In spite of the common belief that women were incapable of acting independently it appears that single women might act for themselves and married women occasionally took charge of their husbands' affairs with courage and ability during their absence. This they were justified in doing by the Common Law principle that a wife in such event was the agent of the husband.

A number of causes probably contributed to the theory of the unity of husband and wife in the person of the husband. Wife purchase had been in vogue in early times and this combined with the attitude of the early church toward women tended to subordinate the wife. Furthermore, women had been at a disadvantage in a society where force, too often, took precedence over the court in deciding disputes. *here*

It must also be conceded that the men of this period were not conscious that the laws were unjust to women, for it was believed that the disabilities of married women were a protection and benefit rather than a hardship. Indeed, Blackstone's comment on the status of women was concluded with the following words: "so great a favourite is the female sex of the laws of England."<sup>21</sup> *use*

This Common Law which denied a married woman practically all rights in property and even the legal right to her children became the foundation for colonial jurisprudence, and with its American adaptations was later introduced into Iowa. The story of its promulgation in this State and its gradual elimination by the substitution of statute law will be discussed in the following chapters.

## II

### EARLY STATUS OF WOMEN IN IOWA

THE territory now included in the State of Iowa came into the possession of the United States as a part of the Louisiana Purchase. Before its transfer to this country, Louisiana had been under the jurisdiction of both France and Spain, and the Civil Law was in force in the white settlements. Since white men, however, were rare and white women almost unknown in the northern part of the province, the political and legal status of women under the Civil Law does not materially concern the history of their rights in the Iowa country.

On the 26th of March, 1804, Congress provided for the government of the new purchase by dividing it into two parts: the Territory of Orleans, south of the thirty-third degree of north latitude, and the District of Louisiana, north of that line. The Governor and Judges of the Territory of Indiana were given jurisdiction over the district of Louisiana; but since the Iowa country remained uninhabited by white people for another quarter of a century, no considerable amount of legislation was needed or provided. The act creating the two political subdivisions of Louisiana provided that the "inhabitants of each district, between the ages of eighteen and forty-five, shall be formed into a militia".<sup>22</sup> It was not the intention of Congress, however, to include women in the militia: indeed, as a rule early laws disregarded women in matters concerning the administration of government, and the

words "person", "inhabitants", and "people" are used without qualifying adjectives when only men are intended.

A year after this first act Congress organized the Territory of Louisiana in place of the District of Louisiana, and on June 4, 1812, the Territory of Louisiana was reorganized as the Territory of Missouri. The act creating this new Territory provided for one representative in the Territorial legislature for every five hundred "free white male inhabitants", and "all free white male citizens of the United States" who possessed certain other qualifications could vote, although the members of the House of Representatives were to be elected by the "people of the said territory".<sup>23</sup> The use of the qualifying adjectives "free white male" suggests, however, not that white women were expected to claim the right to vote, but that slaves or free blacks were to be denied the franchise. The same qualifications were prescribed for office-holding and for jury service—probably for the same reason.

This act also provided that the people of the Territory of Missouri should be entitled to judicial proceedings according to "the common law and the laws and usages in force in the said territory"—a provision that was restated more specifically in an act passed by the General Assembly of the Territory of Missouri on January 19, 1816, which read, in part, as follows:

The common law of England, which is of a general nature, and all statutes made by the British parliament in aid of or to supply the defects of the said common law, made prior to the fourth year of James the first, and of a general nature . . . . which said common law and statutes are not contrary to the laws



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of this territory, and not repugnant to, nor inconsistent with the constitution and laws of the United States shall be the rule of decisions in this territory, until altered or repealed by the legislature.<sup>24</sup>

Laws concerning domestic relations and property rights in Iowa were thus based on the Common Law, since the Iowa country was then a part of the Territory of Missouri, but the judges in this State have a more decisive authority for their decisions than this act, as a study of later Iowa history will show.

When Missouri was admitted as a State in 1821 the Iowa country was not included in any political subdivision: it remained in a state of political orphanage until 1834 when it was made a part of the newly organized Territory of Michigan. The Ordinance of 1787 had been extended over this Territory and thus Iowa fell heir to the provisions of that famous organic act. The Ordinance of 1787 guaranteed to the inhabitants of the Northwest Territory all judicial proceedings "according to the course of the common law", and consequently the settlers who had crossed the Mississippi River were likewise placed under the Common Law.<sup>25</sup>

Although the extension of the Common Law over the Iowa country was considered an advantage by the settlers, who were chiefly of Anglo-Saxon origin, its effect on the position of women — especially married women — was by no means entirely beneficial. Mr. Emlin McClain makes the following comment on the relative status of women under the Civil Law and the Common Law:

As an illustration of the higher civilization embodied in the Civil Law as compared with the Common Law, there would be general unanimity, I think, in referring to the condition of mar-

ried women under the two systems. I say emphatically, married women, for though it is often assumed that by reason of her sex, woman as such is by the Common Law degraded and wronged, yet the fact is that the Common Law has always recognized the perfect equality in property rights, in power to make contracts, in the vindication of her liberties, and the protection of her property between the unmarried woman and the man. The unmarried woman, under the institutions of England, which are still largely prevalent in the United States, is not entitled to the elective franchise, nor to hold public office, but those are mere political privileges having no relations to her civil rights. It was only as an incident of marriage that by the Common Law, the woman lost her power to own or control property, to make contracts, or to bring suits in the courts. But it must not be forgotten that with these disadvantages, she had a total exemption from liability under her contracts, and was in many ways granted immunity from the burdens of legal relations. As contrasted, however, with this inequality in the condition of the married woman under the Common Law it is usual to refer to the doctrines of the Civil Law as illustrating a higher appreciation of her intelligence and legal capabilities. By that system in its present form, she may own property independently of her husband, she may make contracts, and indeed, she is in most respects in the same legal position as a woman unmarried. But this situation is not due to any inherent principles of the Civil Law, indicating a higher reverence and respect for the married woman. By the earlier Civil Law, she became absolutely the property of her husband, and everything she had became his in his complete individual right. She passed under her husband's hand by marriage, as completely as a chattel passed under his hand, when he made a purchase of it and paid the price. Indeed, the original theory of the Civil Law with reference to the entire domestic relations was that the head of the family had over all its members, including his wife, his sons, whether of age or not, and their families, the most

absolute and despotic power, a power extending to the control of the entire family property, and the personal supervision of every member.<sup>26</sup>

The Ordinance of 1787 also made provision for the descent of property of intestates, "saving in all cases, to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate". Estates might "be devised, or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age)."<sup>27</sup> The right of curtesy, however, is not mentioned.

In this connection it would not be practicable to undertake a detailed study of the laws of Michigan which affected the status of women either directly or indirectly. There was no feminist movement in those pioneer days and there was very little discussion of either the legal or political status of women. A few statutes, however, may be cited as of interest. Girls between the ages of fourteen and eighteen and boys between the ages of eighteen and twenty-one could contract legal marriages if the consent of the "parent" or guardian was secured; but the marriage of a girl under fourteen or a boy under eighteen was prohibited — which was a great improvement over the ages of twelve and fourteen fixed by the Common Law.<sup>28</sup> Divorces were to be granted by the supreme or circuit courts for impotency, adultery, extreme cruelty, or wilful desertion for three years. In case of adultery by the wife, the husband was to have her personal estate forever and her real estate during his life if there were children and during her life if there were no children. The court might allow her subsistence out of her property if it desired to do so. In case the husband were

guilty of adultery, the wife was allowed her own property and such alimony as the court might allow, but not exceeding one-half of the husband's income during the life of the wife. If there were children, the court might alter these rules.<sup>29</sup>

It appears that one of the earliest subjects of legislation among these pioneer law-makers was the question of providing for the support of illegitimate children — chiefly because they frequently became a burden on the community. Accordingly, in 1827 an act was passed by the Michigan legislature to enable the mother of such child to compel the father to contribute to its support. The woman might not testify in a case of this kind, however, if disqualified in other cases. About a year later this law was extended to Indian mothers in certain counties. If the mother of an illegitimate child should by neglect or severity cause the death of such child, she was to be punished by a fine not exceeding three hundred dollars, or imprisonment at hard labor not more than two years, or by both fine and imprisonment. The age of consent was ten years; and the punishment for rape committed by one over fourteen years was a fine not exceeding \$1000, imprisonment for not more than twenty years, or both fine and imprisonment.<sup>30</sup>

In respect to property, unmarried women were apparently upon the same basis as men — at least no mention is made of any distinction. A married woman's property, however, passed largely under the control of her husband, although she retained the title. Furthermore the law provided that "when a man and his wife shall be seized of lands, tenements, or hereditaments, in her right and fee, and issue shall be born alive of her

body that may inherit, or might have inherited the same, and such wife shall die, the husband shall have and hold such estate during his natural life, as tenant by the courtesy."<sup>81</sup> If a widow, acting as one of the executors of her husband's estate, should remarry, her husband was given no share in the responsibility, but her marriage automatically extinguished her right to act and the other executors might act without her as if she had died. If a single woman began a suit and married before its completion, her husband upon proof of the marriage might prosecute or defend the suit as if it were his own.<sup>82</sup>

A wife, however, had a certain claim on the real property of the husband, although this claim was inchoate during his life. If he sold the property she still retained her dower right in it unless she joined with him in the transfer and declared, when examined alone by the officer before whom the transaction was made, that her act was not due to her husband's will or compulsion. If she did not give her consent to the sale in accordance with this provision, upon her husband's death, her claim to dower in the property became a legal right and could be enforced against it, no matter who owned it at the time. The widow received one-third of the real estate for life and one-third of the personal property of the husband "forever", if there were children and one-half if there were none.<sup>83</sup>

In case it was impracticable to divide the shares of the children, one of them might take the whole amount and pay the others their share, but in this respect preference was to be given to sons, especially the eldest son. If a child died before it reached the age of twenty-one, the other children inherited its share, and if over twenty-

one and unmarried at the time of death the mother and other children inherited its share at the death of the father. If a man left little or no surplus above his debts his wife was given the right to her apparel and such other allowance as the court might provide.<sup>34</sup>

On April 20, 1836, Congress made the Iowa country a part of the newly organized Territory of Wisconsin. The organic act repeated the provision that only free white male citizens could vote: indeed, no change in the political status of women can be discerned in this act.<sup>35</sup>

Although there was not much legislation concerning the position of women during the two years that Iowa was a part of Wisconsin, some of the acts of the legislature are interesting. Thus, it appears that divorces were granted by the legislature and that the early lawmakers were not unfair to women petitioners, or else wives had more cause for desiring divorces than husbands, for the majority of the acts granting divorces were for the benefit of women petitioners. For example, on January 15, 1838, Martha Newton was granted a divorce from John C. Newton, the status of "*femme sole*" and entire control of their child; and on the same day, Lucinda Jones was divorced from Abraham Jones, both of Burlington, Iowa. All property in the possession of the wife was to belong to her and she was given the custody of the children.<sup>36</sup> Indeed, in many respects women fared better in the matter of divorces at the hands of the legislators than they did in the courts, for the legislature paid little attention to the Common Law, while the judges relied very largely upon it in determining cases involving domestic affairs.

Married women belonged to their husband's families rather than their own so far as legal responsibilities were

concerned, and in the law fixing the responsibility of relatives for poor persons the provision is added that "married females, whilst their husbands live shall not be liable to a suit."<sup>37</sup>

Like all the northwestern or north central States, the Territory of Wisconsin made no discrimination against girls and women in the matter of education. A law passed on December 8, 1836, provided that the Wisconsin University was to be founded at Belmont, Iowa County, for the purpose of "educating youth" and the Dubuque Seminary, Philandrian College at Denmark, and the seminaries at Mineral Point, Depere, Fort Madison, West Point, Cassville, Mount Pleasant, Farmington, Augusta, and in Des Moines County, were planned for both sexes. The Davenport Manual Labor College, however, was to promote the "general interests of education, and to qualify young men to engage in the several employments and professions of society".<sup>38</sup>

The permanent effect of these laws of Michigan and Wisconsin in the newly created Territory of Iowa is, however, a matter of dispute. An Iowa law passed July 30, 1840, repealed the laws of Michigan and Wisconsin and declared that the statutes of Great Britain should not be in force in the Territory of Iowa. This was later interpreted to mean only the laws passed after 1707.<sup>39</sup>

### III

#### PERSONAL RIGHTS OF WOMEN

ANY person living in an organized society is largely dependent for his happiness and welfare upon the laws governing his right to property, regulating his association with other persons, and fixing his relation to the government under which he lives. Or, in other words, a person may have personal, property, and political rights with corresponding obligations. The first two groups are frequently referred to as civil rights as distinguished from political rights and, indeed, in many cases are so closely associated as to be indistinguishable.

Theoretically political rights are fundamental as a means of securing the civil rights of individuals, but in practice a participation in government has generally followed the acquisition of the rights of property and those of personal liberty. Thus the women of Iowa have passed from the restrictions of the Common Law to a position of virtual equality in civil affairs, and now, with a hope of almost certain success, they claim the right to participate in the management of the government under which they live.

The laws most directly affecting the welfare and happiness of women are those which concern their personal freedom and protection and those governing their relations with other persons. Since single women, even under the Common Law, were accorded practically all the civil rights which were recognized as belonging to men, the



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discussion of the acquisition of these rights by the women of Iowa relates largely to married women. The different aspects in which these personal rights present themselves will be considered separately for the sake of clearness, although, as a matter of fact, such rights as guardianship of children and divorce are closely connected.

Among the rights classed as personal as distinguished from property and political rights, are those of personal protection, legal settlement, testimony, recovery for personal injuries, and the guardianship of children.

### RIGHT OF RESIDENCE OR SETTLEMENT

One of the earliest rights secured by law was that of a legal settlement or recognized residence in a certain community. This was made necessary by the system of poor relief administered through local governments and was regulated by law to prevent disputes between different localities as to which should supply relief to a dependent who moved from one locality to another.

The early lawmakers and judges of Iowa recognized the need of such legislation both for purposes of poor relief and, in the case of men, for voting. Any person who lived for a certain period of time in any one place acquired a settlement in that place, and if he became destitute was entitled to poor relief. If a person became destitute in a community in which he did not have a settlement, he was promptly returned to his place of settlement. The frequent provisions in the early Iowa laws concerning this matter are not important: it will only be necessary to indicate the provisions which applied unequally to men and women.

A single woman acquired a settlement on the same

terms as a man; but, in conformity to the Common Law idea, a married woman's settlement followed that of her husband. If he had none, the wife retained that which she had at the time of her marriage. A wife abandoned by her husband could acquire a settlement of her own if she had received authority from the court to transact business independently. Legitimate minor children had the settlement of the father; illegitimate children that of the mother.<sup>40</sup>

This rule has remained in force with only minor changes. The *Code of 1897* permits a married woman whose husband has abandoned her to acquire a settlement as if unmarried without the formality of a court decision, but in other respects the requirement as to a wife's settlement remains practically as at Common Law.<sup>41</sup>

In 1908 the Supreme Court decided that the legal settlement of a married woman follows the husband's only when the family relation exists at the time he acquires the new settlement, and a wife abandoned by her husband, retains the settlement she had. Again in 1915 the same court ruled that if a wife had been committed to a hospital for the insane and the husband moved to another place, she retained her settlement in the county from which she had been sent so long as public restraint continued.<sup>42</sup>

Closely allied with this ancient right of settlement, which had to do largely with poor relief, is the right to acquire a legal residence. This right has become more important than the right of settlement since it is a requirement in voting and in certain judicial actions. Here also, an unmarried woman or a widow is on the same

footing as a man—except in the matter of voting—but a married woman has the same legal residence as her husband unless she has left him for the purpose of obtaining a divorce. Even in this event, the Supreme Court decided in 1899, the residence of the husband would be considered that of the wife for the purpose of serving her with notice of an action when it appeared that she left him without cause.<sup>43</sup>

#### IN THE MATTER OF NAME

In Iowa, as in other Anglo-Saxon commonwealths, legislation concerning the legal names of individuals is largely based upon old customs. The married woman in this State has always, as a matter of course, taken the surname of her husband, nor can she change it after marriage as a man or an unmarried woman may, by application to a district court.<sup>44</sup> Indeed, it appears that the provision in Iowa concerning a woman's name is similar to that of the United States concerning her citizenship: if unmarried, there is no distinction between her and a man; if married she takes her name as well as her citizenship from her husband and he may change either without her consent. There is, however, practically no opposition to this rule concerning a married woman's name,<sup>45</sup> although in States where women vote, the citizenship rule is occasionally a hardship to American women who have married aliens.

#### IN THE MATTER OF TESTIMONY

Although the right to testify before a court is not as a rule personally desired, it is an important and coveted civil right since it is indispensable in the protection of

other rights. Iowa laws have not discriminated against women in this respect, although the provision that neither husband nor wife could be a witness against the other "except in a criminal proceeding for a crime committed by the one against the other" is probably more to the advantage of the husband than to that of the wife. The *Code of 1851*, however, provided that husband and wife might be witnesses for each other—something not permitted by the Common Law.<sup>46</sup>

This has been the general rule of Iowa courts since 1851. Indeed, the Supreme Court once reversed a decision of an inferior court because the judge, in giving instructions to the jury, had declared that the testimony of the defendant's wife in his behalf "should be received *with great caution*".<sup>47</sup>

The *Revision of 1860* contained the rather ambiguous provision that the husband or wife "shall in no case be a witness for or against the other, except in a criminal proceeding for a crime committed by one against the other, or in a civil action or proceeding one against the other, but they may in all criminal prosecutions be witnesses for each other." All prohibitions as to testimony, however, were not to be applicable if the party in whose favor they operated waived the rights conferred.<sup>48</sup>

Apparently the code commissioners intended to prohibit a husband or wife from testifying or being compelled to testify against each other, but the section was so vague that it required judicial interpretation and the courts disagreed as to what the law really meant. In the case of *Karney v. Paisley* it was held that a wife could not testify even for her husband; while later decisions declared that a husband or wife might testify for the

other if the prohibition was waived by the one involved in the case.<sup>49</sup>

This inconsistency was not, however, corrected in the *Code of 1873* for the section appears in almost the same words; but in 1874 the General Assembly so amended the Code as to make it clear that a husband or wife might testify for each other in any case, but could not appear as a witness against the other except in a suit brought by one against the other.<sup>50</sup>

The *Code of 1897* made this exception more definite. A husband or wife might testify against the other *only* in a trial for a crime committed by one against the other, in a civil suit brought by one against the other or by one against a third party for alienating the affections of the other. This provision was amended in 1898 to include "any civil action brought by a judgment creditor against either the husband or the wife, to set aside a conveyance of property from one to the other on the ground of want of consideration or fraud".<sup>51</sup>

No important changes in the law have been made since that time, but the question arises frequently in judicial decisions.<sup>52</sup> From one of these it appears that the rule barring a husband or wife from testifying against the other applies to crimes committed before marriage as well as afterwards.<sup>53</sup> Another case presented an unusual situation. A man was accused of forging his wife's name to an obligation for the payment of money and an attempt was made to compel the wife to testify on the ground that it was a crime involving her. The court, however, decided that the crime was against the person who had been induced to accept the fraudulent paper and not against the wife. Consequently she could not be pun-

ished for contempt of court because she refused to testify.<sup>54</sup>

#### RIGHT TO RECOVER FOR PERSONAL INJURIES

The right to recover for personal injuries by an appeal to civil law has two phases: recovery for an injury to the person bringing the action, and damages sued for on account of injuries to another whereby the plaintiff claims to have been deprived of services or subjected to expense or trouble. The right of recovery for damages in certain cases was provided by the Common Law and unmarried women were entitled to the same privileges as men. Married women, on the contrary, were deprived of practically all opportunities to recover for injuries of any kind; the husband was entitled to all money recovered for injuries to himself, his wife, or their minor children, but in the case of the children he acted merely as the guardian and the money did not legally belong to him. If he were dead the wife regained her right to sue, but she could not recover damages for his death resulting from the negligence of another. Furthermore, the husband was entitled to his wife's society and services and might be given damages if a third person had a part in depriving him of them.

These Common Law principles were in force in Iowa until about 1860, when modifications began to appear, and the decisions of the courts in early years were based upon them. For example, in 1849 the Iowa Supreme Court ruled that a father could not recover damages on account of the marriage of a daughter between twelve and fourteen years of age, because the Common Law recognized the marriage as valid, and the right of the hus-

band to the wife's services was superior to the father's claim on his minor child. "The wife", said the court, "cannot be held to 'serve two masters' therefore the right of the husband must prevail."<sup>55</sup>

In 1856 a wife deserted by her husband was permitted to bring an action for slander without her husband's joining her, since it was held that equity demanded that the wife who had been compelled to support herself should have the privilege of protecting her property and reputation without the formality of a decree from the District Court as the law required. If the two were living together, however, the husband was required to bring the action. One decision contains the following comment:

We suppose that at common law, the rule is well settled, that for an injury to the person of the wife during coverture, by battery, or to her character, by slander, or for any such injury, the wife must join with the husband in the suit. When, however, the injury is such that the husband received a separate loss or damage, as if in consequence of the battery, he has been deprived of her society, or been put to expense, he may bring a separate action in his own name.<sup>56</sup>

The *Revision of 1860*, like the *Code of 1851*, contained few modifications of the Common Law rules governing recovery of damages where married women were concerned. An "unmarried female" might prosecute for her own seduction and recover damages, but another witness was required. The father of a minor daughter, or, if he were dead or disqualified, the mother might also prosecute for the seduction. Ten years later, the husband's share in actions brought against or by the wife was slightly modified, by the provision that the wife might sue or be sued alone except where both were, in their own right, parties to the suit.<sup>57</sup>

The interpretations of these provisions in judicial decisions are interesting because they illustrate the tendency to emancipate women and to construe laws more to their advantage. In 1864 the Iowa Supreme Court decided that the husband must be joined with the wife in an action for slander of the wife; but in 1871 the same tribunal ruled that a married woman had the same right to bring an action for an injury to her person or reputation that she had to bring an action to defend her property, and that the husband had no right to participate except to sue for damages resulting from his own deprivation or expense resulting from the injury to the wife. Moreover, the husband need not join the wife in an action for libel.<sup>58</sup>

The *Code of 1873* reflects these changes in reference to the civil rights of married women. The husband was freed from his former responsibility for torts committed by the wife; and he was likewise denied the right to recover for those committed against the wife except in so far as he was himself injured by loss of the wife's services or by expenses incurred on account of her injury, for he was still responsible for medical attendance and support for his wife, whether she was able to work or not.<sup>59</sup>

The Iowa Supreme Court in applying these provisions worked out a fairly consistent rule. It was agreed that the wife might recover damages for pain resulting from an injury; but the husband alone could recover for loss of time and medical attendance unless the wife was engaged in a business of her own or was working for wages, but even in this event the husband must sue for the expenses of medical attendance.<sup>60</sup>



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Some individual decisions are worth citing briefly as illustrations of the various phases of this question. According to a decision in 1875 neither husband nor wife could maintain an action against the other for a tort committed during coverture. In another case it was decided that a man might recover damages from a physician for mal-treatment of his wife which subjected him to additional expense; but if she died as a result of this treatment, action could be brought only by her administrator. Furthermore, the Supreme Court ruled that it was an error for a lower court to instruct the jury that the damages would be the same for a married as for an unmarried woman—the damages were not the same, since everything an unmarried woman made was her own, while a wife devoted at least part of her time to her husband and his estate.<sup>61</sup>

Another decision, handed down by Judge Shiras at Council Bluffs in 1894, denied a woman damages for suffering resulting from being struck by a switch engine on the ground of contributory negligence, but her husband received \$3000 for loss of her services.<sup>62</sup> In another case the Supreme Court reversed the decision of a lower court giving a married woman damages for disability resulting from an accident caused by a defective street, declaring that the husband only was entitled to sue for such damages while the wife was keeping house for him. Some quotations from this decision express the principles which governed the judges. “We know of no legislation”, an earlier decision read, “which changes the relations of husband and wife so as to give the headship of the family in any case to the wife. He [the husband] is still bound for her support, and entitled to her earn-

ings, when she is not engaged in business on her own account." "Whatever time she [the wife] lost or would lose would have been devoted to his employment, and the loss was her husband's for which she had no right to recover. If we admit her right to recover, defendant would be twice liable, for assuredly, under the rules of law, the husband may recover for such losses as were sustained by her." "She can not recover for loss of time occasioned by an injury, if her occupation is that of a mere housewife in the family of her husband."<sup>63</sup>

In 1899 the Iowa Supreme Court decided that a married woman who owned a sewing machine and earned from five to ten dollars a month sewing might collect damages for loss of earning capacity if injured by the fault of another. In another case the same court declared that a married woman's equal liability for medical services rendered her did not give her a right to recover for such expenses in an action for assault and battery.<sup>64</sup>

Down to 1911, indeed, court decisions in Iowa consistently ruled that a wife might collect damages for pain and suffering, but her husband only could collect for loss of time, unless she were engaged in a separate business, and in any case for the expenses resulting from such injuries. At that time the General Assembly made a radical change in the law by adopting the provision that a woman, if injured by the negligence or wrongful act of a person or corporation, might "recover for loss of time, medical attendance and other expenses incurred as a result thereof in addition to any elements of damages recoverable by common law; and if such injury result in causing death, her administrator may sue and recover for her estate the value of her services as a wife or

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mother or both . . . . but in no event shall the amount recovered exceed the sum of six thousand dollars''.<sup>65</sup> Four years later the maximum punitive damages to be recovered by the administrator of a woman's estate, in case of her death, was raised to \$15,000 — a sum that could be awarded even for "services as a wife or mother".<sup>66</sup>

Thus, by 1915 a woman in Iowa, even though she were married and engaged in housekeeping, came to be recognized as an individual with a right to secure compensation in her own right for pain and for loss of time. The old rule that everything the wife earned belonged to her husband has been displaced at least partially by new statute law.

It is interesting to note that the laws of Iowa from very early times singled out one injury for which an unmarried woman might collect damages, namely, seduction. The civil action to recover damages for this injury was entirely separate from the criminal prosecution which required that the woman be of previously chaste character — while in the civil action there was no such requirement. The *Code of 1851* provided that an unmarried woman might prosecute such an action in her own right; or the father, mother, or guardian of a minor daughter or ward might bring such a suit, but any damages awarded the guardian were to be used for the benefit of the girl. Similar provisions have been repeated in the later codes, the only change being the omission of the guardian's right after 1873.<sup>67</sup>

The amount of damages awarded has varied with the circumstances of the particular case and the financial

standing of the seducer. In one case, for example, a woman was awarded \$5000 and in another \$16,000 for breach of promise including seduction.<sup>68</sup>

#### RIGHT TO RECOVERY FOR INDIRECT INJURIES

It is evident that under the Common Law the legal status of a wife and minor children was one of dependence upon the husband and father. The husband was entitled to the services or wages of the wife and children and could collect damages if wrongfully deprived of them by another. He was, on the other hand, held responsible for their maintenance and medical attendance; and if the cost of this was increased by the fault of another he might also sue for such an amount as would reimburse him for his outlay.

If, however, the man were injured the wife and children had no recourse in their own hands. If the husband survived, it was his privilege to sue for damages, and any which he might secure belonged to him. The wife and children could not secure any compensation for loss of support aside from that awarded to the husband. In case of an injury to a child the right of action for injuries was part of the right of guardianship and could be exercised by the mother only in rare cases.

In Iowa the right of a woman to sue for injuries to others has been closely associated with the administration of estates, the guardianship of children, and the property rights of husband and wife. Thus the question of recovery for indirect injuries by women requires little discussion apart from the history of their rights in these other fields. A woman has been given the right to bring an action for the death of the person of whose estate she

is administrator, for the death or injury of any minor child for whom she is the legal guardian, and, in certain special cases, for loss of support due to some injury to her husband.<sup>69</sup>

It is this third phase of the question which alone requires elaboration in this connection, since the first two are covered by the more general accounts. For the sake of clearness it may be said that a wife can not, under ordinary circumstances, sue for damages on account of injuries to her husband — no matter how much she may suffer on account of them. An exception to this rule, and one which has acquired some importance in Iowa, concerns the recovery of damages by the wife from one who sells intoxicating liquor to the husband. This is entirely a matter of statute law and court decisions, since there is no foundation for such suits in the Common Law.

The *Code of 1873* provided that a wife might sue for injury to her support produced by the illegal sale of liquor to her husband; and this provision with modifications and additions has been repeated in succeeding codes. The damages awarded might include exemplary damages as well as actual damages, it being declared in cases of this kind that "a married woman shall have the same right to bring suits, prosecute, and control the same and the amount recovered as if a single woman".<sup>70</sup>

Court decisions on this subject have been numerous and important, though not always consistent. The courts have decided, for example, that this section applies only to the sale of liquor when such act is illegal; but that the sale of beer, when this was not prohibited, could not be made the basis for awarding damages for loss of support to the wife. On the other hand, even the giving of liquor

to an intoxicated person might subject the giver to liability, according to one judicial interpretation.<sup>71</sup>

Other decisions have established the rule that a wife may collect damages for loss of support either because of the death or loss of earning capacity of the husband due to the illegal sale of liquor to him and for injuries to her person or property resulting from the same cause. Moreover, exemplary damages may also be fixed by the jury, if a basis for actual damages is found. The fact that the husband was habitually intoxicated before the defendant sold him liquor does not, the court decided, prevent the wife's recovery of damages, if the fact of the sale and its illegality are proven. On the other hand, the Supreme Court has ruled that a wife may not recover for threatening language, loss of social position, or similar hardships, not immediately affecting her person or property.<sup>72</sup>

One of the cases involving the liability of the one selling intoxicating liquor included a claim for the value of a horse belonging to the wife which had been sold by the husband while intoxicated. The court decided that the wife could recover the value of the animal from the seller of the intoxicating liquor.<sup>73</sup>

Several years later a decision awarded a wife exemplary damages because her children were compelled to leave home, as well as actual damages for loss of support; but this, the court explained, would be true only in case the defendant were aware of the situation.<sup>74</sup>

Court decisions have generally agreed that in an action brought by a wife for the recovery of damages due to the illegal sale of liquor to the husband it is sufficient to prove that the liquor sold by the defendant contrib-

uted to the intoxication of the husband even if it were not the sole cause of it, but if the wife contributed by giving the husband liquor she could not recover. Even in this event, however, the wife's motives are to be considered; and giving the husband liquor in order to keep him away from places where it was sold was, on one occasion, declared to be no bar to recovery.<sup>75</sup>

It appears that the laws making the seller of intoxicating liquor liable for damages to the wife of the man to whom it is illegally sold are largely intended to supplement the punishments fixed for the illegal sale of liquor. As the sentiment against the sale of intoxicating beverages has become stronger and interest in the welfare of dependent wives and children has increased, the decisions in cases of this kind have become increasingly favorable to the wife.

A case involving still another phase of recovery for indirect injuries came before the Iowa Supreme Court in 1894. This case was a suit brought by a wife on account of the alienation of her husband's affections. Such cases on the part of husbands were, of course, not unusual and were governed by the Common Law. It was generally believed, however, that such action could not be brought by the wife for she possessed no separate personality and could suffer no individual injury. The Iowa decision, however, was rendered in the wife's favor, since, the court declared, the "tendency of legislation in this country is toward making husband and wife equal in law, giving to each the rights possessed by the other, and the legislation of this state is designed to accomplish that end, in most respects."<sup>76</sup>

## IV

### WOMEN IN EDUCATION

PERHAPS the most important factor in the development of any person or group of persons is education. This is a subject that has many different aspects; but in this connection the opportunity to follow out any line of instruction or training desired is the most important of these privileges and is the most essential to the enjoyment of personal and political freedom. In this sense education means more than a chance to attend schools and colleges: it includes the right to take up any desired profession, to speak, and to write without incurring either a civil penalty or social ostracism. Of all educational agencies in America the most fundamental has been the public school.

#### IN THE MATTER OF SCHOOL ATTENDANCE

Co-education has been so much in evidence in Iowa that the general prejudice against it in former times is difficult for us to understand. To the Iowa pioneers it was the natural and only possible plan for the primitive schools. Their boys and girls worked and played together on the prairies; and so when the public schools were first organized the Legislative Assembly declared that they should be "open and free for every class of white citizens between the ages of four and twenty-one years". Horace Mann visited Davenport in 1858 and recommended co-education in secondary schools, and



there is little evidence that any other plan for the common schools was ever considered.<sup>77</sup>

The system, however, was not so universally approved for the secondary schools; and female seminaries were established here and there over the State to provide education suitably diluted for the daughters of the pioneers. But there were other secondary schools which began as co-educational institutions, giving young women the same opportunities as those offered young men. These early schools were semi-public in character since they were incorporated by law, although supported by tuition or private subscriptions. When the public high school was established co-education was the natural rule: the right of girls to attend such schools has never been questioned.<sup>78</sup> The advisability of separate departments or separate classes for high school boys and girls has been frequently discussed in educational circles, but without any idea of discriminating between the sexes.

When the State University was organized there was a decided difference of opinion as to the advisability of the admission of women. The act incorporating the institution made no mention of co-education, and it is possible that the legislators did not even anticipate that women would attempt to enter. All the precedents of European and eastern universities opposed the idea. Nor was there any such association between the University and the secondary schools as there was between these and the common schools.

That some young women did not accept such precedents is evidenced by the first report of students which lists forty-one young women out of an attendance of one hundred and twenty-four. This was not entirely pleas-

ing to the Board of Trustees, who in 1858 voted to exclude women from general university work after that year since it was "neither consistent with the design of a university nor expedient to admit women to regular instruction." Co-education, however, was too strongly entrenched in the State supported schools of Iowa to be successfully prohibited at the State University; and so this ruling of the Board was first modified to permit women to attend lectures, then to attend the normal department, and before the close of the same year the original action of the Board was entirely rescinded.<sup>79</sup>

Thus ended the only serious attempt to exclude women from the State University in which they have been enrolled in large numbers. In 1864 the General Assembly definitely stated that the object of the University should "be to provide the best and most efficient means of imparting to the youth of the State of both sexes upon equal terms a liberal education and a thorough knowledge of the different branches of literature, the arts and sciences".<sup>80</sup>

There appears to have been some thought of excluding women from the State Agricultural College also, for a petition that they be admitted was presented to the legislature in 1868; but here too equality of opportunity prevailed. Indeed, the first enrollment at the college shows thirty-seven young women in attendance.<sup>81</sup>

That the women of Iowa have not failed to prove their equality in intelligence is suggested by the report that five of the nine persons granted life certificates by the Board of Examiners from 1862 to 1873 were women. In 1910 the percent of illiteracy in Iowa was 1.7 for both males and females over ten years of age — the lowest in

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the United States, for the entire population and for men. Two States, however, Idaho and Oregon, showed a lower rate of illiteracy for women."<sup>2</sup>

### IN THE MATTER OF TEACHING

Closely associated with the privilege of school attendance has been the opportunity of teaching. In Iowa the employment of women as teachers in the public schools was never restricted by law, but rather by custom and by economic conditions. In 1848 only twenty-three women were listed among the one hundred and twenty-four teachers in the Territory, or about one to five; but the number of women engaged in teaching increased especially during the Civil War when the men were called to the camps and battlefields, and in 1862 for the first time the women outnumbered the men employed in educational work.<sup>83</sup> This condition has prevailed ever since for the reason that economic conditions have generally given men more profitable occupations and public opinion has considered teaching the employment best suited to respectable young women. In 1910 the number of men teachers in Iowa was 2671, while the number of women teachers was 22,068 — almost ten to one.<sup>84</sup>

The pay of women teachers, however, has remained inferior to that of the men in the same lines of work. According to a report made for 1854 the average wage paid men teachers was less than twenty dollars a month, while that of women teachers was less than ten dollars. It is evident that this proportion varied at different periods and in different places. For example, Iowa City was reported as paying the men teachers in its schools in 1864 an average of \$50 a month, while the women re-

ceived only \$30, although the men teachers' wages in the decade between 1863 and 1873 for the State as a whole increased from twenty-two to thirty-six dollars per month and women's wages rose from sixteen to twenty-eight.<sup>85</sup>

This difference in pay was sometimes regulated by the county authorities. Thus in Muscatine County the compensation was fixed according to certificate and sex — women receiving from twenty-five to thirty-five dollars per month, and men from thirty to forty. A resolution offered in the House of Representatives in 1868 declared that "it is the sense of this House that the custom practiced in some parts of this State of paying to male teachers in our public schools higher prices than are allowed female teachers for the same amount of labor, is a relic of barbarism, and should be discountenanced by all good citizens."<sup>86</sup>

As a matter of fact the salaries paid women in educational work have remained lower than those of the men partly because of the limited field of employment for women outside the school room and partly because women have not, as a rule, desired or prepared for positions requiring executive as well as intellectual ability — positions which usually carry the higher salaries.

Some women, however, have served in such positions and the number is increasing. Mrs. Lou M. Wilson served as superintendent of the West Des Moines schools from 1884 to 1888; and in 1888 Miss E. M. Todd was elected superintendent of the Cedar Falls schools at a salary of \$1250.<sup>87</sup> Nor have women been unrepresented in the honorary positions to which no remuneration is attached. Miss Phoebe W. Sudlow was chosen President

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of the State Teachers' Association in 1876 and twelve years later that position was held by Miss Lottie E. Granger. Three other women have served in this capacity down to 1917: Miss Abbie S. Abbott of Cedar Rapids in 1908, Miss Alice Dilley of Osceola in 1912, and Mrs. Eva Fleming of Ottumwa in 1917.<sup>88</sup>

In college work, women probably occupy a more favorable place in Iowa than they do in eastern and southern localities. It is said that the first woman in America to be elected to a full professorship in a college was Miss Harriette J. Cook of Cornell College.<sup>89</sup>

## V

### WOMEN IN THE PROFESSIONS

ALTHOUGH women were very early included among the teachers of Iowa and girls were equally entitled to the education provided by the Commonwealth, it was not until after the close of the Civil War that women appear in the more specialized professions. While newspaper work, law, medicine, nursing, pharmacy, the ministry, and similar occupations offer work suitable for trained women the number in such professions is relatively small. Two considerations deter women from preparing themselves for highly specialized professions: the length and difficulty of the training required, and the difficulty of coördinating such work with homemaking and the care of children. In other words, women show a tendency to avoid highly specialized training which has little to do with the work of the normal woman after marriage.

The history of the struggle of women for admission to professional schools lies, for the most part, outside the annals of Iowa history; but the adjustments which have occurred in this Commonwealth may profitably be studied as illustrations of the tendency of women to secure freedom of choice and then to select congenial occupations. For the most part, such restrictions as have existed in Iowa as to the admission of women into the professions have been due to popular opinion rather than to legal restraints. Indeed, it would seldom have occurred to early lawmakers to forbid what was practically unheard of.

In discussing this subject it is clear that only such professions as are regulated by law or aided by the State need to be considered. For example, it is not regarded as a part of the State's duties to provide special training for persons engaged in religious work, nor does the law in any way establish qualifications for such occupations. On the other hand, the practice of medicine and law are under State supervision and may be studied as illustrations of professions having a legal status.

#### THE PRACTICE OF MEDICINE

Women have always been especially interested in the care of the sick, and pioneer women had some knowledge of common herbs and their use. Many served as midwives where regular physicians were too distant or too expensive for the settlers. Indeed, some of these home doctors were frequently as competent as many of the so-called physicians who often had little or no professional training. The suggestion that women should study medicine, however, was at first generally opposed.

There were, of course, many reasons for this opposition. Women were considered as intellectually inferior to men, and the life of a physician on the frontier was unusually full of hardships. Medical training was, as a rule, secured largely through a system of apprenticeship by which the physician secured a driver and office assistant, and the apprentice was given an opportunity to read and observe. This training was sometimes supplemented by a course of lectures at some medical school for a few weeks, but many physicians carried on a regular practice without this schooling. Such preparation was, not without reason, considered unfit for young women.

The law, however, made no distinction between men and women; nor did it for many years make any attempt to restrict practice by the incompetent. The *Code of 1851* provided that the College of Physicians and Surgeons at Keokuk, which was named as the medical department of the future State University, should have power "to grant diplomas . . . to such persons as they deem qualified"; and all persons with such degrees might practice in the State, but there was no disqualification of those who were not graduates.<sup>90</sup>

It is probable that the word "persons" used at this time is no proof that women were included, for it was frequently used in early laws when men only were meant. The State, however, never assumed control of the Keokuk medical school and paid no attention to its administration. It is doubtful whether women were admitted to the Iowa institution. The few who entered the profession went east for their training. When the medical department of the State University was organized in 1870 it was clearly the purpose of the institution to admit women, since it was requested that the candidate for graduation should notify the Dean of "his or her" intention.<sup>91</sup>

Moreover, it is evident that there was a demand for such professional education on the part of women, since the first list of students in the medical department contains the names of eight women, five of whom were married. It is recorded that the admission of women to anatomy classes along with male students aroused much discussion and this, together with an experiment known as "a gastric juice dog" and a case of body stealing, gave the school a good deal of advertising which was not



altogether favorable. Two women were graduated from the medical school of the University in 1872 — Anna A. Shepard and Isabel G. Whitfield.<sup>92</sup> By this time a woman's right in the profession was recognized by a part of the people of Iowa although prejudice remained. In 1873, the first woman physician was appointed to a position in a State institution when Miss M. Abbie Cleaves was made an assistant physician at the Mount Pleasant hospital.<sup>93</sup>

According to a list of physicians and surgeons in Iowa in 1878-1879 there were at least nineteen women practicing in the State, nearly all of whom were graduates of some medical course. Of this number about half were homeopaths and half regulars — only one of the graduates having completed the course earlier than 1870.<sup>94</sup>

The first act of the General Assembly providing fully for the regulation of the practice of medicine was passed in 1886. This law made no distinction between men and women candidates: indeed, it specifically included women by the use of the double pronoun "his or her". Equality of men and women in the closely allied profession of pharmacy had been definitely recognized six years before in the law providing for the registration of pharmacists.<sup>95</sup>

The number of women physicians in Iowa has increased steadily, although, as might be expected in a highly specialized and exacting profession, the number is still small. The United States census reported eight women physicians in Iowa in 1870, seventy-three in 1880, one hundred and twenty-eight in 1890, two hundred and sixty in 1900, and three hundred and twenty-five in 1910. This number, though small, is exceeded by that in only

seven other States.<sup>96</sup> The statistics include many women practitioners in the newer and semi-professional schools such as osteopaths and chiropractors. Many others, however, are graduates of high grade medical schools and have large and profitable practices.

#### NURSING

Closely associated with the medical profession is nursing which is preëminently a woman's profession. The first legal restriction on this occupation was made in 1907 when provision was made for the certification of graduate nurses. No distinction was made between men and women — the act applying to all alike. The number of men in this work is, however, negligible. The number of women listed as trained nurses has increased from 160 in 1900, when nurses were classed with women in domestic or personal service, to 1710 in 1910, when trained nursing was listed as a profession.<sup>97</sup>

#### THE PRACTICE OF DENTISTRY

In the profession of dentistry it does not appear that any legal sex qualification or restriction has ever been made in this State. Miss Lucy B. Hobbs (Mrs. Taylor) began the practice of dentistry here in 1863, and later through the influence of her male associates was admitted to a dental college in Ohio from which she had formerly been excluded. Although the number of women dentists in Iowa has always been comparatively small, this is due to preference, since women are admitted both to schools of dentistry and to practice on the same terms as men.<sup>98</sup>

Women have usually been satisfied with equality in

the professions, but the law of 1917 concerning "dental hygienists" apparently gives them a monopoly of this particular work, since it provides that "any woman over eighteen years of age and of good moral character" and a graduate of a training school may be given a license as a dental hygienist upon passing the required examination."<sup>99</sup>

#### THE PRACTICE OF LAW

Among the highly specialized professions one of the oldest and most influential is the study of the law and its application. It has been one of the latest to be opened to women and apparently one of the least attractive to them. It is doubtful whether the women of pioneer Iowa ever desired the right to appear before a court as attorneys, but the subject was being agitated in the East. Apparently the makers of the *Code of 1851* did not favor admitting women to the bar, for they definitely provided that only a "white male citizen" with certain other qualifications might practice law in the State courts. It was not until 1870 that this disability was removed by striking out the words "white male"—negroes and women being admitted on equal terms with white men.<sup>100</sup>

Accounts of the early practice of law by Iowa women are somewhat conflicting. Mrs. Arabella Mansfield of Mount Pleasant is said to have been admitted to the bar in 1869—a year before the General Assembly passed the law removing the disability of women with respect to this profession. Under the law of 1870 several women were successful in passing the examinations. Among them were Mrs. Judith Ellen Foster, Mrs. Annie C. Savery, and Mrs. Emma H. Haddock. Judge Austin Adams was

the first chief justice to admit women to practice in the Supreme Court of Iowa.<sup>101</sup>

The first woman regularly enrolled in the law school of the State University of Iowa was Mary B. Hickey of Newton, Iowa, who graduated in 1873. Since then, between twenty-five and thirty women have completed the law course at the University—seven of whom belonged in the classes of 1899 and 1900. A few of these women have remained in the State as active lawyers, but usually in association with their husbands. Others have located outside the State, and only a few are carrying on an active law business independently.<sup>102</sup> The practice of law has not, however, been popular among the women of Iowa.

The census reports show that the number of women lawyers in Iowa increased from none in 1870, to five in 1880, twenty-one in 1890, and fifty-three in 1900; but only ten are reported in 1910.<sup>103</sup> This decrease is probably due partly to a more strict interpretation of the term and also to a realization on the part of women that law is not at present as suitable for women as other employments, since it requires a long period of training and is not closely associated with the field of activity usually claimed by women. A greater interest in legal work for dependent classes, however, may overcome this condition to some degree.

#### GENERAL SUMMARY

This brief survey suggests that law is the only profession from which women were ever barred by law in Iowa, and this may have been due to the close relation between the courts and political affairs. In such profes-

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sions as medicine, nursing, dentistry, and pharmacy the personal preference of women and public opinion have regulated the number of women thus engaged, while other professions have established the status of women by private agreement.

The following table showing the number of women in certain occupations at different periods in the history of Iowa may be of interest in this connection :

YEAR	CLERGY- MEN	DENTISTS	LAWYERS	PHYSI- CIANS	TEACHERS	OFFICIALS <sup>104</sup>
1870	3	0	0	8	4,472	0
1880	10	1	5	73	10,157	184
1890	34	13	21	128	16,502	243
1900	117	52	53	260	19,589	391
1910	31	43	10	325	22,088	307

## VI

### WOMEN AND THE CRIMINAL LAW

THE exercise of the police power is one of the fundamental activities of government: the protection of life and property is indispensable for the order and prosperity of any community. The status of women under the criminal law of Iowa requires but brief consideration, since only in minor details has there been any distinction between men and women either as to protection from injury or treatment when accused or convicted of a crime. The great mass of criminal law applies equally to both sexes and so does not come within the scope of this study which deals chiefly with distinctions between men and women. The great majority of people almost everywhere are interested in criminal affairs principally from the standpoint of protection. Impartial jury trials for those accused of crimes were, it is true, highly prized by our Anglo-Saxon ancestors, but measures for the safeguarding and reformation of criminals or those accused of crime have attracted attention only recently and rather from motives of public welfare than from personal interest.

#### THE PROTECTION OF WOMEN

The Common Law apparently made little distinction between men and women so far as personal protection was concerned, except in cases involving a husband and wife and in the class of crimes which are based upon differences in sex. It is true that married women were

entitled to very little protection against mistreatment by their husbands, unless such treatment resulted in death, since the law did not interfere in what were considered minor domestic difficulties. The murder of a wife was frankly considered a less important crime than the killing of the husband by the wife, which was looked upon as a kind of treason. A wife was also expected to depend upon her husband for protection against many of the crimes which might be committed against her person or property by a third party.

The attitude of the Common Law towards the sex crimes, such as rape, seduction, and prostitution, has been discussed in an earlier section. It is, therefore, only necessary in this connection to note that the laws were generally more favorable to men than to women — at least as applied in the courts. Furthermore, these acts appear to have been considered largely as injuries against the husband or father who was entitled to the woman's services rather than against the woman herself, since the spiritual courts rather than the civil courts were responsible for the punishment of immorality.

The Common Law was at first the basis for the punishment of crimes in Iowa, but step by step it was superseded by statute laws more favorable to women. In studying the development of these laws only such crimes as rape, seduction, and desertion require consideration since women have been entitled to equal protection in the case of general crimes.

Rape was among the earliest crimes for which punishment was provided by the legislature of Iowa. The penalty for this crime depended upon the age and character of the woman, and hence even under the Common Law

there had developed a minimum age below which the girl was considered incapable of agreeing to her own dishonor. The Iowa law of 1838 accepted the Common Law standard and fixed ten years as the age of consent. If the girl was over that age, proof of her consent or non-resistance prevented prosecution. The punishment in case of conviction was from twenty years to life imprisonment if the victim was less than ten years of age, and if she was ten years of age or more the man, if found guilty, might be imprisoned for not more than ten years and fined up to \$500.<sup>105</sup>

This minimum age of consent remained in force in Iowa until 1886, when it was raised to thirteen; and in 1896 fifteen was established by law as the age at which a girl became responsible for her honor, although she was required to be eighteen before property was entrusted to her care. Since 1896 no change in this particular has been made although a definite movement to fix it at eighteen is evident from the petitions presented to the various General Assemblies — as many as thirty-three petitions having been presented to the House of Representatives alone in 1915. Occasional bills to raise the age of consent have also been introduced, but none have been favorably acted upon, the chief argument against the change being the possible injustice to young men.<sup>106</sup>

Another difficulty in securing the conviction of defendants accused of rape has been the requirement that the testimony of some witness other than the injured person must be presented to secure conviction. This restriction, although intended to prevent injustice to a man accused falsely, has made difficult the conviction of the guilty.<sup>107</sup>



Closely associated with this universally condemned crime is that specified as enticing a virtuous woman to a house of ill-fame. The *Code of 1851* provided a penalty of from three to ten years imprisonment in the penitentiary for this crime, and one year in jail or a \$500 fine for keeping such a resort. A second conviction increased the penalty for the latter offense to three years in the penitentiary. Coercing a woman into marriage was made punishable by a \$1000 fine and a penitentiary sentence up to ten years. The use of stupefying drugs for immoral purposes was to be considered as rape. A special provision was made in case the woman enticed away for immoral purposes was under fifteen. Upon conviction, the one responsible for such an act might be sentenced to three years in the penitentiary or a \$1000 fine and one year's imprisonment in the county jail. For enticing away a girl under twelve years of age, the penalty might be ten years in the penitentiary, a \$1000 fine, or both fine and imprisonment.<sup>108</sup>

The statute penalizing the enticing of a virtuous woman or girl into resorts of prostitution has also been retained in later enactments, and in 1884 the law was so amended as to include women who had formerly been in such resorts but had partially reformed.<sup>109</sup>

Seduction, which involves the use of promises or deceit instead of force or drugs, was punishable by a period of five years in the penitentiary or a \$1000 fine and one year in jail, but the subsequent marriage of the parties was a bar to prosecution. As in the case of rape, the testimony of a witness other than the complainant was necessary to convict.<sup>110</sup>

One question not definitely answered by the *Code of*

1851 was the responsibility of a feeble-minded girl — a common victim of unscrupulous men. This left the question for the courts to decide, depending largely upon the reason or sympathy of the jury. In one case the court ruled that lack of consent was to be presumed, although in the case of normal women the reverse was usually true.<sup>111</sup>

In a trial for seduction a number of elements must be considered: the fact of the crime must be proven and the woman must have been of previously chaste character. Iowa courts have generally assumed a woman to be chaste until she has been proven otherwise, thus throwing the burden of proof in this respect upon the defendant. Seduction accomplished by means of a promise which indicated that the woman was not deceived could not be punished as a crime according to a ruling of the Iowa Supreme Court in 1898.<sup>112</sup>

The *Code of 1897* provided a penalty for desertion by the husband, without good cause, in case the marriage had been the means of escaping prosecution for seduction, although desertion was not at this time made a crime in other cases.<sup>113</sup> Ten years later, however, the General Assembly responded to the popular demand that men who abandoned their wives and children should be punished in other cases as well as the one fixed in 1897. A wife, of course, might obtain a divorce for desertion, but that did not help support the family. The law passed in 1907 provides a penalty of one year's imprisonment in the penitentiary or six months in jail for any man who deserts his destitute wife or children under sixteen years of age and for any woman who deserts her children under that age if they are left destitute. In cases of this

kind the husband or wife are competent witnesses for the State, although they can not be compelled to testify.<sup>114</sup>

#### WOMEN OFFENDERS

As noted above, the Common Law did not, as a rule, hold a woman responsible for a crime or tort committed in the presence of her husband and under his direction, the assumption being that it was the wife's duty to obey without question the command of her husband. This rule, in a modified form, has largely prevailed in Iowa. Indeed, the Iowa Supreme Court has applied this principle of the wife's exemption to a case of manslaughter, although this crime was one of the exceptions under the Common Law, and other American courts have generally held the wife responsible in such cases.

The *Code of 1851* contained the provision that a married woman might be found guilty of arson even though the property destroyed belonged wholly or in part to her husband and this provision has been retained in subsequent codes. The presumption of the wife's innocence, in so far as it applied to a husband and wife jointly indicted for keeping a disorderly house, was also denied by the Supreme Court in 1911.<sup>115</sup>

In other respects criminal law makes little distinction between men and women defendants. It sometimes seems that a woman charged with a crime has an advantage when tried before a jury of men; but if this is true it is entirely a matter of sentiment and not of law.

In the matter of caring for prisoners — especially those not yet tried and those found guilty of slight offences — the people of Iowa have been, on the whole, slow to realize their responsibility. The early lawmakers

paid little heed either to the possibility of reforming men or women convicted of crime or to the evil effects of collecting old and young offenders, the guilty and the innocent in the jails to await trial. The only provision concerning the treatment of women prisoners found in the *Old Blue Book* was the law that men and women must not be confined in the same apartments.<sup>116</sup>

This remained almost the sole restriction on the management of jails in this particular until 1894, when cities having a population of 25,000 or over were required to provide separate apartments at certain police stations for women and children who were under arrest or detained for any reason. A police matron was also to be employed and was to receive a stipend not less than the minimum paid patrolmen. Four years later, the minimum population was raised to 35,000 and only one matron in each city was required instead of several. Smaller cities might adopt the plan if they desired, but it was not obligatory.<sup>117</sup>

The care and treatment of prisoners, especially women, after conviction first began to attract public attention about 1870. Indeed, women convicts have always been comparatively few in numbers in Iowa and in the early days were almost unknown. Moreover, the public conscience had not been awakened to the possibility of prevention and reform.

In 1882 a committee of the House of Representatives, appointed to consider a petition presented by the Woman's Christian Temperance Union, reported in part as follows:

Your committee confidently believe that at an early day the legislature of the State of Iowa will take proper steps and enact

a law establishing an institution or prison of the kind referred to . . . wherein fallen women convicted of crime may be confined, looking to the reclaiming of the virtue of the fallen and lost women, and in connection with said institution a reformatory school may be established for the reformation of the young and tender lost females.<sup>118</sup>

The legislation suggested was not provided, however, and petitions continued to pour into both houses from individuals and societies interested in this reform.<sup>119</sup> In 1890 the General Assembly appropriated \$30,000 for a building for women convicts at Anamosa, and the *Code of 1897* authorized the warden of the penitentiary at that place to appoint a matron to take charge of the women imprisoned there. Three years later the Iowa Industrial Reformatory for Females was established in connection with the Anamosa penitentiary: it was organized as a separate institution under the Board of Control. Another law, adopted in 1907, provided that any female heretofore or hereafter "convicted of a felony and sentenced to the penitentiary" should be sent to Anamosa. Furthermore, girls under eighteen might be sent there instead of to Mitchellville at the discretion of the court, and girls over fourteen might be transferred from Mitchellville to the reformatory if unruly and incorrigible. Besides making these provisions for women convicted of crime the General Assembly also, in 1904, enacted a law that females who were dipsomaniacs, inebriates, or addicted to the excessive use of drugs might be sent to a State hospital for the insane.<sup>120</sup>

Finally, in response to a determined if not a general demand the legislature, in 1913, made an appropriation for the purchase of a new site for the Industrial Re-

reformatory for Females to take the place of the Anamosa annex. Two years later a general outline for the administration of the new institution was drawn up and adopted. This scheme provided for a woman superintendent with a salary of \$2000 a year and board and dwelling for herself and her minor children. The superintendent was empowered to appoint subordinates. All the women convicts at Anamosa and all women over sixteen years of age who might afterwards be convicted were to be imprisoned at the new reformatory when it was ready for occupancy. In addition to the older offenders, all girls between twelve and sixteen years of age who might be convicted of an offense punishable by life imprisonment might be sent to the new institution or to the industrial school as the court might decide. The law also required that any woman prisoner when being transferred from one place to another must be accompanied by a woman attendant designated by the warrant.<sup>121</sup>

When the General Assembly met in 1917 agitation was begun to repeal the act of the earlier legislature and sell the land which had already been purchased at Rockwell City for the new reformatory for women. The movement failed, however, and the only statute concerning this institution which was adopted was one changing the name from the "Iowa Industrial Reformatory for Females" to "The Women's Reformatory".<sup>122</sup>

Closely associated with the treatment of adult women offenders after conviction and even more important perhaps was the attitude of the State government towards delinquent girls. When the Iowa Reform School was established in 1868 it was intended for both boys and girls; but the limited support made it impossible to pro-

vide suitable quarters for the girls during the time when the school was located in Lee County. Four girls, however, were cared for in the family of the superintendent, and thus the law was to some extent carried out.<sup>123</sup>

In 1872 the boys were moved to Eldora and the farm in Lee County was made available for delinquent girls by an appropriation of \$5000. The superintendent was under the direction of the superintendent of the school at Eldora and reports were made as if the two schools were united. Eleven girls were present in 1873, and by 1875 this number had increased to thirty. After much discussion as to the advisability of consolidating the two schools at Eldora, the plan was rejected, and when the lease on the Lee County farm ran out in 1878 the girls were removed to temporary quarters at Mount Pleasant. The maximum age limit was reduced to sixteen in 1876 and the minimum age was fixed at seven, but in spite of this fact there were fifty-three girls in this department in 1877. Two years later steps were taken to secure a site near Mitchellville and forty acres were purchased, together with the building of a seminary, as a site for the present Industrial School for Girls.<sup>124</sup>

The *Code of 1897* fixed the per capita allowance for the boys in the industrial school at ten dollars a month and that for the girls at eleven dollars. The Twenty-eighth General Assembly increased the allowance for girls to twelve dollars per month and fixed the minimum age at nine instead of seven years. In 1913, the two branches of the school were declared to be separate institutions under the management of the Board of Control. The provisions concerning the schools, however, remain almost identical. Boys and girls may be committed to

these schools between the ages of ten and eighteen, but no sentence can extend beyond the age of twenty-one. Certain classes of girls, however, are sent to the reformatory instead of to the Industrial School, and other girls, at the discretion of the court, may be sent to reputable institutions maintained in the State for such girls. In this case an allowance is to be paid to the institution by the county from which the girl is sent. A per capita allowance of thirteen dollars for each boy and sixteen dollars a month for each girl is provided by the State for the maintenance of the schools.<sup>125</sup>

The application of general terms to specific cases is always an important point in legislation and judicial action. The word "person" which, for example, is used generally in the Constitution and laws has been interpreted as referring only to a man in so far as political affairs are concerned, but as referring to either men or women in criminal matters. Indeed, as late as 1915 it was urged that the words "any person" in the statute providing for the punishment of "prostitution or lewdness" applied only to women; but in this case the Supreme Court ruled that it might also apply to men. A woman would be guilty of prostitution, a man of lewdness.<sup>126</sup>

According to the definition of a "tramp" made by the General Assembly in 1890 a woman can not be legally considered as such, since a tramp was declared to be any "male person sixteen years of age or over who is physically able to perform manual labor" and yet refuses to do so and is not able to provide for himself honestly in other ways.<sup>127</sup>



## VII

### MARRIAGE AND DIVORCE

THERE has been a large amount of legislation enacted in Iowa concerning the rights of married persons, but comparatively little relating to the marriage contract or its dissolution. Marriage in Iowa is considered a civil contract between a man and woman who have the proper qualifications to enter into such a contract: it is also a status in which the community is interested as a party. Consequently, the State exercises control over the formation of the contract and restricts or regulates its abrogation or dissolution.

#### IN THE MATTER OF MARRIAGE

When Iowa became a Territory in 1838 its law concerning marriage was derived from the Common Law and from the legislation of the Old Northwest. Thus a valid marriage contract might be made by a woman at twelve years of age and by a man at fourteen.<sup>128</sup> A year later the Legislative Assembly raised the minimum age to eighteen for men and fourteen for women, although a boy between fourteen and eighteen and a girl between twelve and fourteen years of age might make a valid marriage contract if the father's consent was obtained — or, in the case of his death or disability, the mother's approval was sufficient. In all other respects the law made no distinction between the qualifications required of men and women.<sup>129</sup>

When the *Code of 1851* was adopted the minimum age was fixed at sixteen for males and fourteen for females. Persons under these minimum ages could not make a valid marriage contract, while the consent of the "parent or guardian" was necessary if either party was a minor.<sup>130</sup> The age qualifications have not been changed since 1851; but since 1897 the law provides that if either party is a minor the consent of the "parents" is necessary, or that of the survivor if one is dead or disqualified. The Iowa laws have fixed twenty-one as the age of majority for men and eighteen for girls, but all minors attain their majority at marriage.<sup>131</sup>

#### IN THE MATTER OF DIVORCE

Divorce in many of the ancient countries was granted only to the husband and was probably associated with the theory that a wife was a form of property. The owner might dispose of his chattel; but, of course, a chattel was not competent to dispose of its owner. Under the Common Law the wife was, theoretically at least, entitled to secure a divorce for certain causes, but in practice she was at a disadvantage in beginning a suit for divorce, since the husband was given control of all the property, the children, and even the wife's person.

*Causes for Divorces in Iowa.*—Under the laws of Iowa the causes for which divorces may be granted have been, as nearly as possible, the same for men and women<sup>132</sup>—although the interpretation of the laws has varied according to the sentiment of the judges and, until 1846, of the legislators. It will, therefore, be of interest to point out only the distinctions between husbands and wives in divorce legislation and court decisions.

As a general rule public sentiment in the early days opposed the resort of the wife to a divorce court. Married women were expected to yield their preferences and even their rights rather than oppose the wishes of their husbands. A newspaper paragraph on the subject in 1843 contains the following advice to wives: "Study your husband's temper and character; and be it your pride and pleasure to conform to his wishes. Check *at once the first* advances to contradiction, even of the most trivial nature." "How indecorous and offensive it is", continued the same authority, "to see a woman exercising authority over her husband and saying, 'I *will* have it so.' 'It *shall* be done as I like' ".<sup>133</sup>

Wives apparently did not always follow this advice, or if they did it was not sufficient to prevent dissensions, for divorces were not unusual even in early Iowa history. Among the causes usually established by law were: impotency, bigamy, adultery, desertion, conviction of a felony after marriage, drunkenness if acquired after marriage, inhuman treatment, and incompatibility. As has already been stated these causes, while in force, applied equally to men and women, so that there is no need to discuss each one separately.<sup>134</sup>

Although a husband has always been legally required to support his wife, failure to support her is not of itself a cause for divorce in Iowa although it may be included in desertion or inhuman treatment.

One of the few provisions relative to divorce in the wife's offense only is mentioned as a cause it found in the *Code of 18* also in later codes section gives the husband right to secure from the wife if, at t their marriage

pregnant by another, unless he had an illegitimate child living at the time unknown to the wife. The existence of such child did not, however, entitle the wife to a divorce — it merely acted as a bar to the granting of a divorce to the husband on account of the wife's misconduct.<sup>135</sup>

Cruel or inhuman treatment has ordinarily been one of the causes for divorce by either husband or wife in Iowa; but, as a matter of fact, this charge has been more frequently preferred by women than by men. For this reason the definition of "cruel or inhuman treatment" requires a brief discussion in a paper dealing with the differences between the legal and political status of men and women in Iowa.

It is evident that the opinions of the courts might vary greatly as to what would constitute "cruel or inhuman treatment". In 1871 the Iowa Supreme Court decided that a wife was not entitled to a divorce on this ground unless it threatened physical danger. "Mere turbulence of temper, petulance of manner, infirmity of body or mind", declared the judges, "are not numbered among these grave and weighty causes. . . . And it is not every slight touching of the wife by the husband, even in anger, which will justify a divorce." This decision appears to be a lineal descendant of the old opinion that a husband might chastise his wife if he did not use a stick larger around than his thumb.<sup>136</sup>

Later decisions, however, have given a broader meaning to the words. In 1889 it was decided by the same court that "cruel or inhuman treatment" need not be physical, and a wife who left her husband for cause could not be held to have deserted him.<sup>137</sup> Moreover, repeated assertions by the husband that the wife was unchaste,

made in the presence of the family or others, was in one case held to be sufficient cause for divorce, since such a charge would naturally produce a mental state detrimental to health. On the other hand, a similar charge made by the wife against the husband was not generally considered sufficient to injure his health. The wife could not secure redress in this case, however, if she by her wrongful acts provoked the cruel treatment.<sup>138</sup>

*Alimony.*—The chief problems associated with divorce cases, aside from the question of the divorce itself, are the adjustment of financial claims and the disposal of the minor children. The financial settlement was in the beginning an outgrowth of the Common Law principle that the wife's property came under the husband's control at marriage, while he was required to supply her with necessities in keeping with his station in life, so long as she remained at home. The influence of this rule is observable in the first law regulating divorces passed by the Territorial legislature.

One of the causes for which a divorce might be granted at that time was adultery, and if the wife was the guilty party the husband received all her personal property as his own and was to be given the use of her real estate during his life, if there were children, or during her life if there were none. If the husband, on the contrary, was the offender, and there were no children the wife was permitted to keep her own property and to receive such alimony as the court might assign her during her life, but this could not exceed one-half of the husband's income. This provision was to be modified at the discretion of the court if there were children.<sup>139</sup>

A law of 1840, however, repealed this provision, declaring merely that the guilty party, in case of divorce, forfeited all the rights acquired by marriage. Property acquired by the husband at the time of the marriage was to be settled upon the wife and children, if the wife secured the divorce. Alimony could be granted only to the wife, and on the condition that she was the innocent party. This was usually a money payment made by the month or year and was assigned to the wife in recognition of her right to support by her husband. If the man's income increased, the alimony might also be increased by an appeal to the court which had granted the divorce.<sup>140</sup>

The *Code of 1851* made no attempt to provide the details of property settlement in case of divorce, but it was provided that "when a divorce is decreed the court may make such order in relation to the children and property of the parties and the maintenance of the wife as shall be right and proper."<sup>141</sup>

Four years later a case arose which required the interpretation of the word "alimony". A wife who had been granted a divorce had been given eighty acres of the three hundred and forty-five acres held in the husband's name, but partly paid for with money belonging to the wife. The husband did not contest the divorce decree: he merely denied the authority of the court to grant land to the wife, on the ground that "alimony" meant a money payment and not a division of real estate. The Supreme Court, however, upheld the district court, basing its decision upon the words of the Code and also upon equity. "While technically, perhaps," reads the decision, "it [the land] is recognized as the husband's,

yet rightly and properly, it is also the wife's . . . .  
It is not his nor hers, but *theirs*."<sup>142</sup>

This recognition of the wife's claim to a share in the common property instead of to maintenance only suggests that "alimony" meant the share of property granted to one of the parties to a divorce as a recompense for the dower right which, of course, ended whenever the marriage was dissolved. Accordingly it appears that alimony might legally have been granted to a husband out of the separate estate of the wife in case he secured the divorce.

Since the wife was entitled to support, however, and the husband was not, alimony was most frequently granted to the wife and was considered almost as much her prerogative as it had been before 1851. Indeed, so complete was the husband's control over the wife's property at this time that few wives maintained a separate title to their property and thus the husband received it without the formality of a court decree.

Indeed, the wife was sometimes granted alimony even when she was the guilty party, for in 1871 the Supreme Court reversed a decision of a lower court which gave a wife alimony although she had been guilty of adultery. The higher court, however, decided that she was not entitled to alimony under the circumstances if the husband had received no property from her or she had not contributed to the common fund.<sup>143</sup> This decision, which indirectly recognized the right of even a faithless wife to a share in her own property, was much more lenient than the law of 1838 which had deprived the wife of all right to her own property as well as to support from the husband.

As has already been stated, alimony in the original meaning of the term is usually granted only to the wife, since she is entitled to support from the husband if she is the innocent party, while she owes no such obligation to him. The term "alimony", however, has frequently been used to denote compensation paid by one of the divorced persons — usually to the injured party as a substitute for the property right acquired by marriage and lost by the divorce. In this sense alimony is sometimes awarded to the husband.

The *Code of 1873* provided that in case of divorce "the court may order either party to pay the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action."<sup>144</sup> Indeed, in 1882, a husband was awarded \$300 alimony by the district court, although he was at fault and had already taken some \$400 worth of the wife's property. The Supreme Court permitted the sum of twenty-five dollars allowed as an attorney's fee to stand, but denied the rest as unjust.<sup>145</sup> Likewise, the court set aside a decree of alimony granted to the husband in an *ex parte* suit, on the ground that the real estate involved had been purchased with his money, when it was proven that this claim was false.<sup>146</sup>

On the other hand, the Iowa Supreme Court has decided that a husband's surety could not escape an obligation for temporary alimony on the ground that the wife had appropriated goods from the husband's house, since the wife is presumed to have a right to use the household goods; nor can a debt for alimony be evaded by a fraudulent conveyance of property.<sup>147</sup>



Court decisions in divorce cases have on the whole become gradually more favorable to women. In 1896 a wife was awarded \$750 a year out of the husband's salary of \$1500, but she had two small children to support out of her allowance. Again in 1911 an award to the wife of \$2500 out of \$5000 worth of property was likewise confirmed.<sup>148</sup>

In case the wife accepted service of a notice of a divorce action and failed to appear, the courts decided that she could not afterwards secure alimony; but a voluntary separation in which she agreed to release her claim upon her husband's property has been held to be no bar to alimony, since such agreements are invalid.<sup>149</sup>

In addition to alimony the husband or wife may put in a claim for attorney's fees. This is usually allowed to the wife when the husband is the offending party, but may also be awarded the husband. The reason for allowing the wife attorney's fees is very evident when it is considered that the property acquired by the joint labor of both husband and wife is frequently under the sole control of the former. The justice of allowing such expenses to the husband out of the wife's property is less evident.

The court rulings have usually allowed attorney's fees to the wife in case the husband appeals after a divorce has been granted her when she has established her right to it. The husband may also be charged with attorney's fees if he accuses the wife of acts which, if true, would reflect upon her reputation — unless he can prove that the charges are true. But if the wife begins an unnecessary suit or dismisses a well-founded one, it has been decided that her lawyer can not collect his fee from

the husband, even though the action was dismissed without the attorney's consent.<sup>150</sup> Decisions on this point are not uniform, however, since the decision rests upon the opinion of the court in each case.

It has also been decided that alimony may be granted to a wife without a divorce in case she leaves her husband for conduct justifying a divorce, and the husband may be compelled to pay the costs of the action.<sup>151</sup> Such a decision is, however, based upon equity and public policy and not upon statutory law.

*Disposition of Children.*—Many divorce cases also involve the disposition of children; and here there is great difficulty in formulating any general rule. Early judges were strongly impressed by the father's paramount right to the children as found in the Common Law, and the mother was frequently denied the guardianship of her children even when she was the innocent party. The divorces granted by the legislature between 1838 and 1846 were, on the contrary, much more favorable to the mothers, and the husband was sometimes denied the right of control either of the children or of the wife's property. Wives were frequently given permission to resume their maiden names, and in at least one case the child was also to bear the mother's maiden name.<sup>152</sup>

The disposition of minor children is one of the most important of the judge's duties in divorce cases where there are such children, but data as to the number granted to the husbands and to the wives are not available except in scattered court records. In case the wife brings the suit and secures the divorce she has usually been awarded the custody of the minor children, espe-

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cially since the time of the Civil War. Possibly it is because of this that the divorce cases begun by wives show a larger proportion reporting children than do those brought by husbands. Out of the 26,384 divorces secured by women in Iowa between 1887 and 1906, it appears that 14,325 involved children; while only 2640 of the 8490 divorces granted to husbands reported children. The number of children involved in the former group was 27,339, and in the latter 4643. Since the children are generally given to the mother if she secures the divorce and sometimes even when she is the defendant in the suit, it is probable that the wives secured the custody of a large per cent of the children disposed of by the courts.

From 1887 to 1906 the statistics of divorce for Iowa were as follows:<sup>153</sup>

		CASES REPORTING CHILDREN	CASES REPORTING NO CHILDREN	CASES NOT REPORTING AS TO CHILDREN	CASES REPORTING NUMBER OF CHILDREN	NUMBER OF CHILDREN REPORTED
Total Number	Husband	2,640	4,173	1,677	2,430	4,643
	Wife	14,325	8,417	3,642	13,746	27,339
For Adultery	Husband	882	1,151			
	Wife	1,045	750			
For Cruelty	Husband	435	526			
	Wife	5,720	3,260			
For Desertion	Husband	1,156	2,198			
	Wife	4,566	2,810			
For Drunkenness	Husband	37	47			
	Wife	1,613	816			
For Combinations of Causes	Husband	98	135			
	Wife	1,030	513			
For All Other Causes	Husband	32	116			
	Wife	351	268			

*Number of Divorces.*—A comparison of the divorce statistics of the various countries and States proves that the number of divorces is not of itself an indication of the status of women or the happiness of married people. Japan, for example, had a ratio of about one divorce to three marriages during the period between 1887 and 1896, while France had only about one to forty; and yet the position of women was probably better in France than in Japan.<sup>164</sup> On the other hand, it can not be assumed that women are more unjustly treated in Nevada where divorce is frequent than in South Carolina where it is almost unknown.

Many factors combine to determine the divorce rate of a country or State. Religion, social conditions, custom, and economic conditions are among the more important influences determining the attitude of people toward divorce and the status of divorced persons. The development of an independent personality by the women of a country may also increase the divorce rate until social readjustment is secured.

None of the influences mentioned have predominated in Iowa, although the divorce rate has been affected by all of them. The pioneers were intensely individualistic, cared little about the religious side of marriage, and naturally considered that a civil contract made under the authority of the State could likewise be dissolved by a decree of the courts or by an act of the legislature. There was no mysterious sanctity about a marriage ceremony performed by a frontier justice of the peace. Divorce was restrained only by morality, reason, and the respect for the marriage institution which prevailed among the Iowa pioneers.

Sufficient proof that the alleged grievances were true was not always required. Indeed, in the legislative divorces no attempt was made to hear both sides of the case. It was apparently the belief of the legislators that no one would ask for a divorce without good reason or at least that the contract might as well be dissolved if one or both of the parties to it were dissatisfied. The Iowa legislature did not even consider each case separately, but included several divorces in a single bill. An example is found in a law passed over the Governor's veto in 1842, by which no less than eighteen couples were divorced.<sup>155</sup>

The courts also had jurisdiction over divorce cases, but many persons apparently preferred the less expensive and easier method of direct legislation. Since 1846, however, all divorce cases have been tried by the district courts, the General Assembly being denied the power to grant divorces.

The proportion of divorces granted to husbands and wives is of great interest in the study of the legal position of women and should be considered in connection with the total number. This proportion will be affected by two things: the provocation given, and the ability of the one injured to secure redress by an appeal to the law. In other words, the relative number of divorces granted to husbands and wives will vary with the equality or inequality of men and women before the law and also with the treatment accorded one by the other. If a wife whose husband is unfaithful to her knows that she will lose the companionship of her children if she secures a divorce, she will often prefer to remain at home. Again, the law may protect the wife, but if she is afraid to act or is

ignorant of the laws in her favor, she must endure ill treatment, since interference by third parties is worse than useless.

It has been said above that the total number of divorces indicates very imperfectly the happiness or unhappiness of married couples. It is also true that the States in which the wives obtain half or more than half of the divorces are not necessarily the ones in which husbands are most cruel or unfaithful to their wives. As one writer has said, "Divorces to wives measure their resistance, not their burdens."<sup>156</sup> In this respect the legislative divorces were far ahead of the time in which they were granted, for thirty-four of the fifty-two divorces granted by the legislature during the period between 1838 and 1846 were in behalf of wives.<sup>157</sup>

Unfortunately, statistics concerning the divorces granted by the courts are not available for the State as a whole until 1867, and it was not until 1887 that the number granted to husbands and wives was separately reported. Even since then, information concerning the disposition of the children and the division of property is incomplete. It is probable, however, that the judges were much more conservative than the legislators, for they were more influenced by the Common Law.

Statistics concerning the divorces granted in the United States between 1867 and 1906 have been compiled by the government. From this report some idea of the number of divorces granted in Iowa during this period and the relative number granted to husbands and wives may be gained. For each of the five-year periods the numbers are as follows:

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	HUSBAND	WIFE	TOTAL
1867-1871	1,058	1,780	2,838
1872-1876	1,145	2,364	4,509
1877-1881	1,436	3,178	4,614
1882-1886	1,588	4,015	5,603
	<hr/> 5,227	<hr/> 11,337	<hr/> 16,564
1887-1891	1,649	4,454	6,103
1892-1896	1,933	5,767	7,700
1897-1901	2,347	7,466	9,813
1902-1906	2,561	8,697	11,258
	<hr/> 8,490	<hr/> 26,384	<hr/> 34,874 <sup>158</sup>

From this table it appears that during the twenty years from 1867 to 1886 a total of 11,337 divorces were granted to wives in Iowa as compared with 5227 granted to husbands; while during the next twenty years the wives received 26,384 divorces and husbands 8490. Women in Iowa therefore received 68.4 per cent of the divorces granted during the first twenty-year period and 75.7 of those granted between 1886 and 1906. In both cases this is a larger proportion than that for the United States as a whole — which was 65.8 per cent for the first period and 66.6 per cent during the second twenty years. As has been pointed out elsewhere, however, this does not mean that domestic difficulties are more common in Iowa than in other localities.<sup>159</sup>

The number of divorces granted for each cause and the division of this number between the husband and wife also presents some interesting variations, as the following statistics for Iowa will show:<sup>160</sup>

	ADULTERY		CRUELTY		DESERTION		DRUNKEN- NESS	
	H	W	H	W	H	W	H	W
1867- 1886	53.5%	46.5%	12.3	87.7	38	62	4.7	95.3
	1,360	1,184	370	2,647	2,814	4,592	62	1,260
1887- 1906	53%	47%	10.2	89.8	33.4	66.6	4	96
	2,374	2,103	1,162	10,254	4,285	8,542	112	2,719

This table presents two noteworthy features: the large per cent of divorces granted to husbands on the ground of adultery, and the increase in the number of divorces granted to both husbands and wives because of cruel treatment; for it will be noted that although for other causes, the number of divorces was about twice as large in the second period as in the first, in the case of cruelty the numbers are approximately five times as large in the second twenty years.

The larger number of divorces secured by husbands because of adultery is probably to be explained on other grounds than the greater immorality of women. Men are much less inclined to condone their wives' lapses in morality than wives are those of husbands, and since they are usually in possession of the family property and more able to support themselves than married women are there is no economic pressure to influence them to forgive. Besides, men are less likely to be detected in their unfaithfulness since they are more frequently away from home and among strangers. Possibly, too, men are inclined to emphasize this cause, since it is the one which would arouse the greatest sympathy for the husband; while women may prefer to base their claims on cruelty and thus avoid the details connected with a trial for adultery.

The increase in the number of divorces granted to



both husbands and wives on the ground of cruelty is due, probably, to the more lenient judicial definition of cruelty since 1886. As has already been shown, cruelty, at first defined only in terms of physical danger, was later enlarged to include mental suffering.

This question may also be studied by a comparison of the same statistics from a different angle. The proportion of divorces granted for each cause to the entire number granted to the husband and to the wife for these two twenty-year periods is as follows:<sup>161</sup>

	ADULTERY		CRUELTY		DESERTION		DRUNKEN- NESS		COMBI- NATION OF THESE		OTHER CAUSES	
	H	W	H	W	H	W	H	W	H	W	H	W
1867-1886	26%	10.4%	7.1	23.3	53.8	40.5	1.2	11.1	3.3	6.5	8.6	8
1887-1906	28%	8%	13.7	38.9	50.5	32.4	1.3	10.3	3.4	6.7	3.1	3.7

It would seem that certain conclusions might be drawn from these various groups of statistics, though several conditions probably exist in most cases. For example, it will be seen that the number of wives obtaining divorces is about five times the number of husbands in the cases where there are children and only twice as many in the cases where no children are reported. Several influences probably contribute to this result. The women who have children are not so likely to desert their homes nor to commit many of the acts which justify divorce. This is to be seen in the divorces granted for adultery where the wives obtain the larger per cent when there are children, while the husbands receive the majority when there are no children.

Furthermore, the statistics concerning cruelty and desertion appear to indicate that wives frequently secure divorces in such cases for the sake of the children, since

the proportion granted to women with children is much larger than that to those without. Possibly the fathers of families find greater reason for escaping their responsibilities as expenses increase.

There can be little question but that women in Iowa have received fair treatment in divorce cases, at least since about 1870. Both laws and court decisions are as favorable to them as to men, while public opinion has reversed the Common Law right of the father to the children and invests the mother with an equal if not a superior right, although the welfare of the children concerned rather than the right of either parent concerned is supposed to be the decisive factor in disposing of minor children involved in divorce cases.

## VIII

### GUARDIANSHIP OF CHILDREN

THERE is, perhaps, no right so essential to a woman's happiness as the control of her own children — at least on equal terms with the father. And yet there was no right more flagrantly disregarded by the Common Law, which failed to recognize the mother's claim upon her children except in very rare cases. This law, as has been seen, was still in force when Iowa became a Territory and it was considered a matter of course that the father should be the sole guardian of the children while he was alive. His consent only was required to apprentice a child, while the mother's was accepted only in case of his death or disability.

#### LEGITIMATE CHILDREN

In case the father died leaving minor children possessed or entitled to real or personal property those over fourteen years of age might choose a guardian, while the court appointed one for those under fourteen; and it was only when the mother was thus chosen or appointed that she became the legal guardian even after the father's death. Moreover, it appears that he could appoint another as guardian for his children's property by will and thus deprive the mother of this authority.<sup>162</sup> It is evident, however, that in cases involving the custody of the children and not of property, the mother was considered the natural guardian without formal action of the court.

The *Code of 1851* contained the following provision concerning the guardianship of children: "The father is the natural guardian of the persons of his minor children. If he dies or is incapable of acting the mother becomes the guardian." By another provision the natural and actual guardian of any minor child was given the right to appoint another guardian for such child by will, but it is not clear that this gave the father authority to will a child away from the mother as he could under the Common Law. The mother was to be the guardian of a child's property in case of the father's death or disability, if the court deemed her a suitable person.<sup>163</sup>

The supreme authority of the father while alive was not, however, limited either by legislation or judicial decisions. This is illustrated by a case decided soon after the adoption of the *Code of 1851*. A wife had obtained a divorce from her husband and been given the custody of a daughter three years old, although the two sons were given to the husband. Later the father claimed the girl also, and the Supreme Court decided in his favor, since his interest was considered paramount. In the decision is found the following comment:

We are aware that in this, our day, the spirit of progress is abroad in the land, but whilst we would not obstruct its onward career to triumph over error and oppression, we think that it is well to observe and maintain those great and cardinal principles upon which the integrity of the social compact must ever depend. The just appreciation of the rights and duties of the marriage contract, and its incidents, is essential to the existence of civil and christian society.<sup>164</sup>

In other words, the wife must choose between a divorce and the companionship of her children. The

“rights”, apparently, were to be guarded for the husbands; while the “duties” were to be impressed upon the wives.

If the father were dead, however, the legislators and judges generally recognized the mother’s right to the control of the minor children and to their wages if she wished to collect them.<sup>165</sup> This right included also the responsibility of providing for the support of minor children — the father being responsible if he were alive, and the mother in case he were dead.

Public sentiment, however, changed radically during the decade of the Civil War. In 1867 the Iowa Supreme Court declared that the tendency was to give the children to the mother in case of divorce, and in 1873 the equal right of the mother was guaranteed by the Code, in which it was stated that “the parents are the natural guardians of their minor children, and are equally entitled to the care and custody of them.” In case one died, the other became the sole guardian, and the father, mother, or a third party might be appointed the guardian of the property of a minor child in case such property did not come from the parents.<sup>166</sup>

The Supreme Court has passed upon a number of cases which involved the rights of husband and wife to their children. As a rule the mother is considered the proper guardian for young children in case of a separation; and the fact that the father afterwards becomes wealthy and offers to take the children would not prevent an increase in alimony which would help the children although they remained with the mother.<sup>167</sup>

The final step in the matter of safe-guarding the mother’s right to her children was the passage of the

widow's or mother's pension act in 1913. This was an attempt to secure for every mother, even though she were destitute, an opportunity to keep her children with her by paying her a weekly stipend for each child under fourteen. The success of this law is not yet assured, but of its importance there can be no doubt.<sup>168</sup>

#### ILLEGITIMATE CHILDREN

In the matter of the guardianship of illegitimate children the mother has been somewhat the preferred parent. Under the early Iowa laws the father could be compelled to support such a child. The illegitimate child inherited from the mother and from the father also if publicly acknowledged, while the mother became the favored one in the matter of inheriting from an illegitimate child. Very few changes have been made in these provisions since 1851.<sup>169</sup>

## IX

### PROPERTY RIGHTS OF WOMEN

#### IN THE MATTER OF OWNERSHIP

THE right to own and manage property is one of the fundamental rights of mankind, but only in recent years has this right come to be recognized as belonging equally to women. When the Territory of Iowa was organized in 1838 it was apparently taken for granted that unmarried women could own and control property on the same basis as men — the number who did so, however, must have been very small. Married women, on the other hand, were not so fortunate; the judges and lawmakers were slow to recognize their right to control their own property whether personal or real. They were bound by the old Common Law, and when on February 1, 1844, there was introduced into the Legislative Assembly a bill which promised to married women the right to all property acquired by them either before or after marriage, the measure failed by a vote of eleven to twelve.<sup>170</sup>

Two years later, however, the legislature enacted a law which gave to a married woman the right to hold property, provided it did not come from her husband. Such property was not liable for the husband's debts, although the control of it was vested in him and all suits concerning it must be prosecuted jointly and all deeds signed jointly.<sup>171</sup>

Iowa was admitted into the Union on December 28, 1846, but neither the rejected Constitution of 1844 nor

the Constitution adopted in 1846 made any mention of the property rights of women. It was not until the adoption of the *Code of 1851* that any noteworthy progress was made. Indeed, it is the general rule that most of the statute law conferring rights and privileges upon women is to be found in the codes. According to the *Code of 1851* a married woman's property did not vest in the husband, nor did he necessarily control it. If the wife permitted her husband to take charge of her property, she was required to file a record of ownership if she wished to hold it free from the husband's debts to third parties and to collect it from his estate when he died.<sup>172</sup> Furthermore, it was decreed by the Iowa Supreme Court in 1855 that in case a wife's property were sold during coverture and the notes and mortgages given in payment for it made payable to the husband alone, at his death the wife, who was made executrix, must treat these notes and mortgages as a part of the estate and not as belonging to her.<sup>173</sup> The taxable property of married women was by the *Code of 1851* required to be listed by the husband, or, if he refused, by the wife. The Code also provided that "married women may receive grants or gifts of property from their husbands without the intervention of trustees".<sup>174</sup>

The *Code of 1851*, however, did not dislodge the old Common Law idea from the minds of some people. In a case before the Iowa Supreme Court in 1860 it was argued that a wife could not buy property, for all her money and property belonged to her husband. The court ruled that a married woman might acquire real and personal property and hold it in her own right — a decision to be expected under the *Code of 1851*. The same



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question came up again in 1862, this time involving choses in action and notes payable to the wife but delivered to the husband as her agent. Again the court held that since it was self-evident that they belonged to the wife the husband and his creditors had no claim upon them.<sup>176</sup>

The *Revision of 1860* also made several provisions concerning the property rights of married women—most of which were either repetitions of those in the earlier Code or elaborations of them. It restated the rule that a wife's personal property did not vest in her husband, but she was required to file a notice of her ownership if she wished it to be free from his debts. Bank stock and other similar personal property, however, need not be listed unless given to the wife by the husband.<sup>178</sup>

The courts frequently attempted to distinguish between property acquired by the wife as a gift from the husband and that received from other sources. For example, in 1864 the Supreme Court of Iowa decided that a wife could not hold property purchased with her husband's money, or money recognized as his, even though the title was in her name. "As a rule", declared the judge who wrote the decision, "the services of the wife and the products of her labor belong as much to the husband, under our statute, as at common law." Since neither the *Code of 1851* nor the *Revision of 1860* specifically stated that a wife's wages could not be taken by the husband or his creditors, the courts at this time generally assumed that they belonged to the husband although it does not appear that he could collect them directly.<sup>177</sup>

The very next year, however, the same court ruled

that if a husband purchased land with his money, putting the title in his wife's name, the presumption was that he intended it as a provision for her and not in trust for himself; and the same rule held, it was declared, in case the wife bought the land using the husband's money.<sup>178</sup> The status of the wife's property in this case was decided as between husband and wife and not with reference to third parties; the same was true in two other cases decided about the same time. In one case the court ruled that money belonging to the wife at marriage did not vest in the husband — the notice required being merely for the protection of third persons. Even when such a notice had not been filed, the wife might maintain an action of replevin against her husband for the purpose of securing possession of any property belonging to her, if she left him for cause or he drove her from home. The wife, however, might give her money to her husband and thus bar herself from any claim to it, but a promissory note executed by the husband to the wife for money furnished by her was proof that she had not so given away her money and was binding on him or his estate.<sup>179</sup>

A little later a question arose as to the validity of a mortgage given by the husband to the wife for a bona fide debt and duly recorded. The court decided in this case that the wife's claim under the mortgage was superior to that of a subsequent purchaser of the mortgaged property. The judge who wrote the decision said in part:

The ownership of the wife and the possession of the husband being inconsistent, the statute provides that the *ownership* shall, as to third persons without notice of the real ownership, be presumed to be in the party having the possession. But in this case

the wife's *interest as mortgagee* is not inconsistent with the husband's *possession* when she records her mortgage and thereby gives notice to the world of such interest.<sup>180</sup>

A case which presented a number of unusual features was decided in 1861. The essential facts were as follows: a woman with an illegitimate child married, but had no children by this marriage. She purchased property with her own money and later sold it without her husband's joining in the deed, taking a mortgage in her own name. This the husband collected, and the land was sold. The court decided that the husband had no right to the land nor to the mortgage, but that the wife's deed given in the first place was not valid without the husband's signature. This decision did not, however, invalidate the son's claim as the heir of his mother.<sup>181</sup>

By the close of the Civil War the right of even a married woman to her own property was generally conceded in Iowa, the emancipation of the negro to some extent emphasizing the injustice of refusing to white women rights which former negro slaves possessed. The chief difficulty in the way of the complete independence of the wife in respect to her own property was the necessity for protecting third parties who supposed the property in the possession of the husband to be his own. Because of this difficulty, proof of the wife's ownership was frequently required and this proof had to be more definite in cases involving innocent purchasers than in many other cases where such persons were not concerned.<sup>182</sup>

It appears that the amount of property owned by women began to attract attention about this time, for an Iowa newspaper in 1871 after printing the statement that unmarried women of the United States were said to

own about \$400,000,000 of property added the comment, "Here is a large lump of taxation without representation."<sup>183</sup>

The *Code of 1873* tended to equalize still more the property rights of husband and wife, although no important changes were made. A wife might own property by descent, gift, or purchase, and might manage it under the same limitations imposed upon the husband. It must be remembered, however, that the property accumulated by them jointly was usually in the husband's name. Property belonging to one and held by the other might be recovered by law. The *Code of 1873*, likewise firmly established the right of married women to their own wages and to maintain action for them in the section which provided that a "wife may receive the wages of her personal labor and maintain an action therefor in her own name, and hold the same in her own right; and she may prosecute and defend all actions at law or in equity for the preservation and protection of her rights and property, as if unmarried."<sup>184</sup>

In spite of all this the idea that the husband had a right to the wife's property died out slowly from the minds of men, although the courts have not usually upheld the claim. In 1877 the Iowa Supreme Court held that under the *Code of 1851* the property of the wife which she left under the control of her husband did not become his to such an extent that at his death it descended to his heirs instead of to his wife.<sup>185</sup> Indeed, it has become an uncontested principle that a wife may hold a claim against her husband for a bona fide debt even against other creditors. An illustration of this ruling is to be found in the case of *Stamy v. Laning et al.* in which

the Supreme Court ruled that if a husband conveyed property to his wife to whom he was indebted and who knew of his indebtedness to others, the conveyance would be legal, but only for the amount owing to the wife. All in excess of that amount would be subject to the claims of the other creditors. Moreover, in the case of *Jones v. Brandt*, in which the wife gave her husband money to invest for her, and he invested it in real estate in his own name, the court held that although under section 2499 of the *Revision of 1860* the property was the husband's in so far as third parties who were ignorant of the real ownership were concerned, yet under section 2202 of the *Code of 1873* it constituted a debt from the husband to the wife and she could collect from him.<sup>186</sup>

The various court decisions dealing with the property rights of women, especially married women, suggest that they owned a considerable amount of property. In 1886 it was reported that 673 women owned and directed farms, five owned greenhouses, and ninety managed market gardens — indeed, it was claimed that three women in Maquoketa paid more taxes than all the city officers together.<sup>187</sup> Many women were earning money in other ways. Keeping boarders, for example, was declared to be an independent business, and the proceeds belonged to the wife.<sup>188</sup>

In a case decided in 1890 the Supreme Court of Iowa ruled that land purchased by the wife with money paid her for taking care of her husband's mother and other money earned by her, could not be taken by the husband's creditors, on the ground that they believed it to be the husband's; nor could the crops from a farm worked by the wife and sons be held for the husband's debts,

even though he attended to the business affairs and listed the property to the assessor in his own name.<sup>189</sup>

It is evident that the courts have usually decided cases involving the property rights of married women in accordance with the law of equity rather than with the Common Law. The failure of husband and wife to have an understanding concerning financial affairs has made the decisions more difficult than they otherwise would have been. For instance, a case came up for decision in 1894 in which the husband had purchased land in his own name with money derived from his wife's farm. No agreement that the money so used should be returned was made and the court decided that the wife could not claim that the property was held in trust for her. The next year, on the other hand, the court decided that if the wife loaned her husband money on condition that he should convey to her certain land and he conveyed it to her the same day that a judgment was rendered against him, the conveyance was legal.<sup>190</sup> By the time the *Code of 1897* was adopted, the right of married women to their separate property and wages was well established. The Code summed it up in the following words: "A married woman may own in her own right real and personal property, acquired by descent, gift or purchase, and manage, sell and convey the same, and dispose thereof by will, to the same extent and in the same manner the husband can property belonging to him." The joint property, however, remained in the husband's control.<sup>191</sup>

A brief reference to a few court decisions will complete this discussion. They are, for the most part, very favorable to the wife's claims. In the case of *Clark Bros. v. Ford*, decided in 1905, the court decided that an agree-

ment made between the husband and the wife's parents that he should repay her the money they advanced to him would support a transfer of property to her, even though there was no other contract and irrespective of the insolvency of the husband. Such a conveyance, it was held, could be set aside only by showing fraud.<sup>192</sup>

Even in case the husband conveyed property to the wife or purchased it in her name without receiving anything for it, such a conveyance was to be considered a gift unless contrary to the statute or unless evidence to the contrary was offered, and she could not at his death be held to account for it as part of her distributive share.<sup>193</sup> In this case no third parties, except perhaps the other heirs, were involved.

The old Common Law gave the husband absolute control over the wife's property, while the Iowa Supreme Court in 1915 ruled that if the husband took possession of his wife's property without her consent, she could bring an action against him to recover it as if he were a stranger. Even if she consented to his use of the property, she might recover it at any time if it was of such a character that his creditors had no reason to believe that the property was the husband's.<sup>194</sup>

#### IN THE MATTER OF DOWER

The right of the wife to dower and that of the husband to curtesy under the Common Law have been discussed in a former chapter. The Territorial laws of Michigan and Wisconsin modified them only slightly, and at the time of the organization of the Territory of Iowa these rights remained practically the same as under the Common Law. Indeed, in January, 1839, the Iowa legis-

lature passed a law governing the distribution of estates of deceased persons containing a proviso, "saving to the widow, in all cases, her dower, and to the husband his courtesy, according to the course of the common law."<sup>195</sup>

Another law adopted at the same time provided that any devise of property to the widow by the husband's will debarred her from dower, unless she renounced the bequest within six months. Her dower interest at this time was fixed at one-third of the real estate for life and she was given a distributive share of one-third of the personal property "forever". If there were children they received the remainder, and if not, it went to the husband's father, or if he were dead, to the mother. A certain amount of property, including a bed, wearing apparel, one cow, one horse, household furniture, and supplies for one year, could not be taken for the husband's debts. The status of married women is evident from a clause in this act which declared that wills should be binding unless protested within five years after being probated "saving to infants, *femes covert*, persons absent from the Territory, or *non compos mentis*, the like period after the removal of their respective disabilities."<sup>196</sup>

The *Code of 1851* provided that one-third of all real estate which had belonged to the husband during the period of the marriage and to which the wife had made no relinquishment of her rights should, at the death of the husband, be set apart for the wife, if she survived, "as her property in fee simple". This substitution of permanent ownership of the one-third for the life tenure is the most important change in the law fixing the wife's dower made up to this time, but it was repealed in 1853



and the Common Law right substituted. The husband was given the same right to the property left by the wife that the wife had in his property if she survived him — that is, one-third of all her real property which he had not joined in transferring to another and one-third of all personal property in her possession at the time of her death. The estate by curtesy, which gave him all of her property for life, was abolished.<sup>197</sup>

The widow's dower could not be affected by will unless she consented to receive the bequest instead of dower; and if there were no children and the husband left no will, the wife received one-half of his estate and his father the other half. If the man were unmarried, the father received it all. If the husband's father were dead the property was to be given to his heirs, and if he left none, the mother received the property, and if both the father and mother were dead and left no heirs, the wife — or her heirs — was to receive the entire estate.<sup>198</sup>

It will be noted, however, that only one-third of the estate was dower; the other one-sixth which the widow was to receive if there were no children and no will was in addition to dower.<sup>199</sup>

The *Code of 1851* appears to be very clear and specific, but the assignment of dower and the disposal of the remainder of the estate gave rise to a succession of lawsuits. Some of these are of interest because of the points of law they involve and some because of the curious complications they present. For example, in 1852 a case came up for decision in which a widow sued the executor of her husband's estate for \$150 — the value of wheat cut from the land assigned to her as dower. The court decided that, although under the Common Law growing

crops went to the executor, the wheat belonged to the widow, since her dower was hers absolutely and every thing belonging to the land went with it.<sup>200</sup>

Another case presented still another phase of the difficulty of administering laws concerning the disposition of estates. The story of the dispute may be briefly summarized. In February, 1851, the husband died, and in the following July, a child was born which died soon afterwards. According to the Code, the widow received one-third as dower, and the child the remainder. What then became of the child's share at its death? The court decided that in conformity with sections 1410 and 1411 of the *Code of 1851*, the estate of any child dying unmarried and intestate went to the father, if living, and if he were dead, was to be disposed of as if it had been in the father's possession at his death. Accordingly the widow in this case received one-third of the child's share and the husband's father or his heirs the remainder.<sup>201</sup>

The General Assembly sometimes passed special laws which were contrary to the general laws. Thus on January 13, 1855, a law was passed giving to Hannah Everall, the widow of Henry Coats who had died without other heirs, the right to hold the estate free from the control of her second husband, and a few days later a man was given authority to sell his property free from the dower right of his wife, although she was to have dower in what he left at his death.<sup>202</sup>

Much confusion in the matter of dower arose from the combination of the Common Law and the statute law. An illustration is found in a case decided in 1855. A widow, who held title to real estate for infant children, remarried and later made a deed of the property to the

children, the husband not joining. Her second husband took possession of the property and received the rents and other profits. The guardian of the children brought suit to recover possession for the children. The defendant claimed the land by right of the Common Law as his wife's dower, although she herself made no claim to it. The court decided that the property was never the wife's in her own right, and so her husband had no right to it. Moreover, dower could not be claimed in this way, for land bought by one person with money belonging to another was declared to be held in trust.<sup>203</sup>

In 1858 a slight change was made in the disposition of the property of a man who died intestate. If he left a wife but no children, one-half of his estate went to his wife and the remainder to his parents. If no wife survived him, his entire estate went to them; but if the father were dead, the mother received only a life estate — the property at her death descending to her children by the father of the intestate. If there were no such heirs, the property was to be divided between the heirs of the father and mother.<sup>204</sup> The *Code of 1851*, it will be remembered, gave the property to the "father" instead of to the "parents".

The *Revision of 1860* included the law of 1853 which gave the widow the Common Law right of one-third of the husband's personal property and a life interest in one-third of the husband's real estate instead of an absolute title to it. The *Revision* also gave an alien widow the right to dower, and declared that no property exempt from execution in the hands of the widow as the head of a family was to be disposed of by the executor of the estate. Two years later the legislature amended section

2477 of the *Revision* and restored the right of the surviving husband or wife to an absolute title in one-third of the real estate and in one-third of the personal property of the deceased spouse. According to this law the husband's share in his wife's estate was also known as dower.<sup>205</sup> In 1867 the Iowa Supreme Court ruled that under section 2437 of the *Revision of 1860* a widow would not inherit the share of a child which died before the death of the husband.<sup>206</sup>

In 1862 the General Assembly passed an act providing for the support of the widow and minor children for one year at the expense of the entire estate.<sup>207</sup>

The majority of the laws concerning the distribution of estates dealt with those concerning which no will had been made. Indeed, the chief legal restriction on wills at this early day was that which assigned the one-third to the surviving husband or wife. This could not be willed away unless the survivor voluntarily accepted the provisions of the will. The judicial decisions, however, were frequently conflicting. In 1867 the court ruled that the widow could not take both dower and the homestead, but the following year permitted the widow of a man dying without issue to receive one-half of the real estate and the homestead.

Again, the judges decided that a will which gave the wife one-third of the real estate for life and gave the remainder to the heirs was in lieu of dower because the assignment of dower would have interfered with the provisions of the will. The next year they ruled that a wife did not forfeit her right to dower by choosing a will which bequeathed her one hundred and seventy acres of land and all the personal property for life or until she

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remarried, when it was to be divided among the husband's heirs.<sup>208</sup>

In case a man died without heirs other than his wife, the Iowa General Assembly sometimes passed special acts giving the entire estate to the wife instead of permitting one-half of it to escheat to the State, as it would otherwise have done.<sup>209</sup>

Although the law provided that the personal property of an intestate decedent should be divided in the same manner as the real estate, the Supreme Court in 1872 decided that section 2435 of the *Revision of 1860* did not apply to personal property and hence the widow could not obtain her share of such property when the husband disposed of it by will.<sup>210</sup>

On the other hand, it was declared that the widow's interest in the husband's real estate was not subject to his debts as was that of the other heirs; and the widow was under no obligations to pay any portion of the taxes levied on the lands of her deceased husband before her dower had been assigned. The allowance of support for twelve months was held to be superior to the claim of a creditor on the estate, but her dower was subject to a mortgage executed to the grantor for the purchase price.<sup>211</sup>

In 1870 section 2498 of the *Revision of 1860* which limited the right of the mother to a life estate in the property of a child who died intestate was repealed, and the mother was given absolute possession of such property.<sup>212</sup>

The *Code of 1873* made some changes in the property interest of husband and wife. One-third of all legal or equitable estates in real property possessed by either

was to go to the survivor in fee simple at the death of the owner. The rights of dower and curtesy were abolished and the part of the property assigned to the survivor is henceforth known as the distributive share, although the terms — especially dower — continue to be used in Iowa. The widow was to be given the home as a part of her share if she desired it; and the widow of a non-resident was given the same rights in the estate of her husband that resident women had except as against purchasers from the husband.<sup>213</sup>

If the property was not easily divided one of the heirs might take it all and pay off the rest; if no one else wished to do so, the widow was to have the privilege. The *Code of 1873* reversed the provision in the *Revision of 1860* by providing that the widow should receive her distributive share instead of the bequest made in the will unless she consented to take under the will within six months.<sup>214</sup> It was also provided that the wife of an intestate who left no children or parents, and whose parents left no heirs, should receive the entire estate. The General Assembly had sometimes made provisions of this nature in particular cases and it was made a general rule by the commissioners who drafted the Code.<sup>215</sup>

The interest of the surviving husband and wife in the property of the other was thus well defined, but the assignment of "dower", as the widow's share was still called, continued to be a fruitful cause of dissension. The husband's share does not appear in as many cases — probably because few wives left separate estates. A few court decisions will illustrate some of the questions and the attitude of the judges toward them. The acceptance by the widow of a bequest of a life estate in her hus-

band's lands, it was declared in 1875, did not bar her right to the distributive share. In case the estate consisted of several tracts, the Supreme Court ruled that it was proper to assign to the widow so much of one or more than one as constituted one-third of the whole.<sup>216</sup>

The wife's claim on the property in her husband's name during his life was not so easily determined; but in 1876 the Iowa Supreme Court held that, although her right in it was inchoate during his life, she might still prevent fraudulent alienation of it. In the case directly under consideration the court ruled that where the husband by negligence or fraud permitted a son by a former marriage to acquire title by a sheriff's deed, the wife might subject the property in excess of the amount of the judgment to her claim to dower.<sup>217</sup>

Furthermore, there is evidence that even at that time there was a movement to include personal property with real estate in the matter of alienation without the wife's consent, since in 1880 a petition to require the wife's signature to a chattel mortgage was introduced into the Senate.<sup>218</sup>

In the following year the court interpreted section 2452 of the *Code of 1873* as including personal as well as real property and decided that the husband could not by will either before or after marriage deprive the wife of her one-third. There has, however, been little restriction on his right to dispose of it before his death either by sale or gift, and the wife's consent is not necessary. A bill was introduced into the Senate in 1886 which would have prohibited the sale of household goods without the consent of both husband and wife, but it failed to become a law at that time.<sup>219</sup>

Two cases illustrate some of the difficulties in administering estates. In one, decided in 1881, the husband willed all his property to his wife until the youngest child attained a certain age. The court ruled that one-third was hers in her own right and the remainder she held in trust for the children. In the second case, decided in 1900, the wife was given support from the entire estate by the will, and the court awarded her one-third absolutely and support from the remainder.<sup>220</sup>

The distributive share was not an inheritance according to the decision of Judge J. H. Preston of the District Court, concerning an insurance policy of \$2000 payable to the "heirs", for the judge ruled that the widow was not a "legal heir" and the daughter received the entire amount. This decision was affirmed by the Supreme Court in 1890. The *Code of 1897*, however, specifically provided that the phrase "legal heirs", when used in insurance policies, should be construed to include the husband or wife of deceased. Furthermore, the Supreme Court decided in 1904 that where the wife was made the sole beneficiary under the will, she was entitled to all money collected for his death, to the exclusion of their children.<sup>221</sup>

In 1896 a case came up for settlement which involved another technicality. The widow agreed with her husband's executors and the other legatees to accept the provision of the will in consideration of \$10,000. She afterwards claimed her distributive share, but the court ruled that she had yielded her right to all real property, although she might have had both dower and the bequest if her consent to the will had not been entered on the records.<sup>222</sup>



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The General Assembly in 1896 made the wife's signature necessary on a mortgage of exempt property. This provision was repeated in the *Code of 1897* and is still in force; but according to a court decision the husband might sell exempt property or assign exempt earnings without the wife's consent. In 1906 a law was passed requiring the wife's signature also for the assignment of wages.<sup>223</sup>

The *Code of 1897* made very few changes in the property rights of married women. The legislature in 1913, however, passed an act which gave the entire estate of the husband who had no children to the widow if its value was under \$7500. The estate in excess of this amount was to be divided between the wife and the parents. The same rule applied to the husband's share in the wife's estate.<sup>224</sup>

The "judge made" laws are much more numerous. In 1903 the court decided that, in case the husband's will made the wife sole heir and legatee along with a further provision that at her death it should go to certain persons, the second devise was invalid since it was repugnant to the first. Another interesting decision was handed down in the following year. Here the wife had refused to accept the will and claimed one-half of the estate, there being no children. The court ruled that if she refused the will she could have only one-third and the husband's mother the other two-thirds, for the law giving the wife one-half was only in case there was no will.<sup>225</sup>

In 1882 the widow was declared to have the right to choose between the homestead for life and her distributive share. Occupancy of the homestead for ten years was held to be equivalent to an election to take the home-

stead. A similar decision was handed down in 1890.<sup>226</sup>

From these laws and decisions it appears that the distributive share of husband and wife is now the same in law, except that the property listed as the husband's is frequently the result of the work of both husband and wife and in such cases the wife receives one-third or one-half of the joint accumulation in place of her own share and the part of the husband's share assigned her by law.

This distributive share can not be alienated except by divorce, or by a definite and recorded choice of a bequest by will, or, in some cases, by an election to take the homestead instead of the distributive share. Indeed, the courts have frequently allowed the distributive share and either the bequest or the homestead.

#### ALIENATION OF DOWER

The Common Law, it will be remembered, made the right of dower difficult to alienate, and this principle was carried into the laws of Iowa. Apparently the legislators and judges, especially in the early days, took the attitude that women were accustomed to leave business affairs entirely to their husbands or fathers and hence were incapable of acting for their own best interests. Indeed, the early laws are the severest indictment of the position of wives and the general attitude of the husbands towards their wives in business matters. Ignorance on the part of the wife and the possibility and even the probability of coercion on the husband's part were apparently taken for granted, and so special laws were made to protect the wife.

The right of husband or wife in the estate of the other is, of course, destroyed by divorce. It may also be re-

linquished by the joining of the husband or wife with the one owning the property in making a deed or mortgage, or by an agreement entered into before marriage. Likewise it may be voluntarily renounced after the death of the owner of the property and the will or homestead right chosen instead. Iowa laws and courts, however, have almost uniformly prohibited the relinquishment of the dower right by a contract between husband and wife during coverture.

The first law concerning the relinquishment of dower under the Territory of Iowa was passed January 4, 1840. It was made legal for a married woman to relinquish her dower interest in her husband's property by joining with him in the transfer of the property to another, but she must be examined apart from her husband and, in the presence of the judges, one of whom must personally know her, must declare that she knew the content of the conveyance and that she signed it voluntarily and not under the coercion of the husband. A married woman could convey her own real estate only with the consent of her husband and must also declare that the act was not due to his compulsion.<sup>227</sup>

This law, moreover, was enforced by the courts: in 1853 the Iowa Supreme Court ruled that the widow was entitled to a life estate in property which her husband had sold in 1840, the wife joining in the deed, because the officer before whom the deed was made failed to certify that the contents of the deed had been made known to the wife and that she voluntarily relinquished her dower as required by the act of 1840. This decision contained interpretations of two other points of law, since it declared that the right of dower was governed by the law

in force at the time the conveyance was made and not by that in force at the time of the death of the husband. Consequently the widow received only a life estate as provided by the act of 1839, instead of an absolute title as would have been the case under the *Code of 1851*.<sup>228</sup>

In 1853 the Iowa Supreme Court ruled that a wife, through a trustee, could contract with her husband for separate maintenance, releasing her claim for support and dower; but she could not do so without the trustee.<sup>229</sup> Moreover, when a husband and wife made a postnuptial contract through a trustee that the wife should have her separate property in return for \$5000, it was decided that she could make such an agreement since there was consideration.

The fact that a wife joined with her husband in a conveyance of real estate did not, according to the Supreme Court, make her responsible for the contract; nor did the fact that she signed a mortgage, without expressly relinquishing her dower right as required by the law of 1840, prevent her from asserting her claim to dower at the death of her husband.<sup>230</sup>

The laws regulating the relinquishment of dower are interesting in that they illustrate the general movement towards the greater independence of women and less of the paternalistic attitude on the part of the government. In 1858, for example, the requirement that the judge before whom a woman signed a transfer of property, must personally know her and explain to her the content of the paper she signed, was repealed.<sup>231</sup>

Moreover, the Supreme Court decided in 1862 that when a wife joined in a trust deed, without reading it, she could not rely on this to free her from the conse-

quences as against an innocent purchaser. A decision involving a different principle was handed down a few years later: the wife signed a blank mortgage with her husband and he inserted a description of the property of the wife and delivered it to a third party to negotiate; the judges decided that this was not the deed of the wife and was invalid.<sup>232</sup>

In line with the general movement to recognize women as responsible for their acts, the Supreme Court, in 1868, decided that a conveyance in which the wife relinquished dower in real estate would be supported unless there was proof of fraud or coercion. In other words, the wife would be presumed to have acted voluntarily unless there was evidence to the contrary; while under the earlier law it was taken for granted that she was controlled by the husband. Furthermore, in case of a separation, the wife might convey her interest in the husband's property to him without the intervention of a trustee.<sup>233</sup>

The courts as a general rule have declared any relinquishment of dower during the marriage as invalid except in case of transfer to another. This has always been the rule in Iowa, although in 1875 the court decided that if a wife agreed to accept a certain sum in lieu of dower and the husband provided for this in a will which the widow at first accepted, she could not afterwards claim her dower. This was prevented, however, by the election of the will and not by the agreement.<sup>234</sup>

The *Code of 1873* definitely prohibited such relinquishment of "dower" by postnuptial agreement, declaring that "when property is owned by either the husband or wife, the other has no interest therein which can

be the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities or either the husband or wife who is not the owner of the property, except as provided in this chapter."<sup>235</sup> In interpreting this section the Supreme Court upheld the provision, declaring that "dower" was limited to one-third and that the husband or wife might dispose of the other two-thirds by will, whether there were children or not.<sup>236</sup> A similar case was decided in 1889. Here the husband and wife had agreed to divide the estate before his death. The husband later conveyed his share to a third party without the wife's signature, and after his death the wife claimed her one-third of this property, which was awarded to her on the ground that the agreement was contrary to public policy and therefore void: the husband could not convey a complete title without the wife's signature, nor could she before his death relinquish what was merely a contingent right.<sup>237</sup>

Again, in 1901 the wife was awarded "dower" although she had made an agreement to accept certain lands and an annuity for life in place of her distributive share.<sup>238</sup> A variation of these postnuptial contracts was later held valid. A husband and wife agreed to unite their estates in the creation of a trust for a third party who was to come into possession at the death of the survivor. The husband survived and remarried. His second wife claimed dower, but the court decided that the husband held possession only for life and that she could not recover.<sup>239</sup> The only exception to this rule is the interpretation that the husband and wife might contract concerning alimony (section 2203 of the *Code of 1873* notwithstanding), although the proviso was added that

such a contract would not be held valid unless reasonable and just to the wife.<sup>240</sup>

It appears that the requirement that the wife must relinquish dower in real estate to complete the transfer did not prevent the sale of property in case the wife refused to sign, but the property remained subject to the claim of the wife for her distributive share. Indeed, it was decided in 1886 that where a man sold land without the wife's signature and bought other property, the wife might claim dower in both.<sup>241</sup>

Nor could the dower interest of the wife be alienated by the husband under power of attorney, for under section 3154 of the *Code of 1897* the distributive share can not be the subject of contract between them. A legalizing act in this matter passed in 1902 was declared to be unconstitutional and void.<sup>242</sup>

In 1913, however, a provision concerning post-nuptial agreements was made to read as follows: "No conveyance of real estate heretofore made, wherein the husband or wife conveyed or contracted to convey the inchoate right or dower to the other spouse, acting as the attorney in fact, by virtue of a power of attorney executed by such spouse, such power of attorney not having been executed as a part of a contract of separation, shall be held invalid as contravening the provisions of section thirty-one hundred fifty-four of the code", but all such conveyances were legalized.<sup>243</sup>

The attitude of the lawmakers and judges towards postnuptial contracts between husband and wife applied only to those concerning dower: other contracts and conveyances based upon other considerations than the marriage relation were valid.<sup>244</sup>

Antenuptial contracts have, on the whole, been held valid by the courts, although the rule has been to protect the widow's one-third interest. For example, in a case in which the woman had made an antenuptial contract to claim "no right of dower or homestead in or to any property which shall belong to the estate" of the husband, the widow was given one-third of the personal property and the interest on \$3000 for life as provided for in the contract.<sup>245</sup>

In case the wife made an antenuptial contract to relinquish dower on consideration that the husband should repay to her children the money he received from her, or if she outlived him, she was to receive this herself and \$1000 in addition, the contract was declared to be valid.<sup>246</sup>

A mutual antenuptial relinquishment of interest in each other's property was declared in 1910 to be valid, but only so far as it applied to property owned at the time of marriage. The allowance for one year's support, however, was declared to be a part of the cost of administration and the wife could not cut off her right to it by an antenuptial agreement, providing the allowance itself was proper.<sup>247</sup>

The complexity of these marital property rights may be shown by a case decided in 1887 where the wife signed mortgages releasing her dower and afterwards became the owner of the senior mortgage. The owner of the junior mortgage attempted to collect from her, but the court ruled that he could not recover after the statutory time had expired.<sup>248</sup>

These laws and court decisions relate almost entirely to the voluntary alienation of dower by the wife: the



husband is usually given the same privileges, but cases concerning his claim seldom appear in the courts. The right to the distributive share on the part of either husband or wife may be lost or modified in other ways. Divorce, for example, automatically extinguished such claim. One case in which a claim for dower was filed after a divorce had been granted is found in 1850, but this was merely a question of the legality of the divorce.<sup>249</sup>

In 1911 the General Assembly attempted to secure uniformity and diminish litigation by passing a law that all conveyances made prior to 1890 should be valid even though the spouse did not join, unless suit should be brought within a year after the act went into effect. In case the one who made the conveyance was still alive, the time was extended to two years; nor did it apply to suits already instituted. An additional law was passed in 1913 which prohibited action for recovery of the distributive share in property conveyed by a deed of trust before January 1, 1890, unless suit was begun by March 1, 1914.<sup>250</sup>

The "dower" right of either husband or wife may be alienated in other ways than by voluntary relinquishment. Such alienation, however, is unusual, and nearly always is brought about by judicial order. In 1884 it was decided that an assignment for the benefit of creditors was a judicial sale and under section 2440 of the *Code of 1873* cut off the wife's distributive share. The wife could not, however, be compelled by a court of chancery to relinquish her interest to property in a suit to which she was not a party.<sup>251</sup>

It was likewise decided in 1908 that an entryman

under the timber culture laws of the United States had no vested right in the land until the patent was issued, and upon his death the widow would have no dower right, though his heirs might prove up by right of purchase and not by descent. Under the laws of this State the widow was not an "heir" and acquired no interest in the premises.<sup>252</sup>

A sale of land for taxes, it was held in 1910, cut off the widow's claim to her share—the provision in the *Revision of 1860* that a married woman might redeem land from tax sale being held to refer to her own property and not to inchoate dower right.<sup>253</sup> On the other hand, in 1914 the Supreme Court declared that the wife's distributive share could not be held for a mechanic's lien if there was sufficient other property to pay the debt.<sup>254</sup>

Perhaps the most interesting decision of all was handed down in 1904. Section 3386 of the *Code of 1897*, which prohibited a murderer from inheriting from the one murdered, would not, the judges held, prevent a wife who had murdered her husband from receiving her distributive share of his estate; but more than one-third was denied her even if there were no children.<sup>255</sup>

Not only have the Iowa courts usually protected the widow's right to her distributive share; but they have sometimes, though not always, extended this protection to transfers of property immediately preceding marriage. In 1881 a conveyance of real estate to children just prior to a second marriage, and without the knowledge of the wife, was held not to be a fraud; but in 1908 this decision was contradicted and the widow was given dower in such real estate. When the wife knew of the transfer, however, she was considered to have agreed to it.<sup>256</sup>

The most striking injustice concerning mutual property rights of husband and wife is the failure to give the wife a control over personal property similar to that given her in the real estate in the husband's name. Frequently such personal property has been acquired partly as the result of the wife's efforts; yet it is usually held in the husband's name and he has absolute control over it. An illustration is found in a case decided in 1884. The wife joined the husband in a deed to real estate and the husband invested the money in other property which he put in the name of a son. As a result, the wife received neither dower nor homestead right.<sup>257</sup> Except for minor restrictions, the husband can dispose of personal property as he wishes.

#### IN THE MATTER OF CONTRACTS

The right to make contracts is, of course, closely associated with the ownership and control of property and involves both civil rights and responsibilities. As in the matter of property, the laws of Iowa have not discriminated in this matter against unmarried women; but the status of married women has been a matter of legislation and court adjudication.

The Common Law gave the wife no right to make contracts, nor could she be held responsible for one: her husband had complete authority over her person, her children, and her property. As her right to hold property in her own name developed, so also her ability to make contracts concerning it increased and her responsibility was made to correspond.

In Iowa Territorial days the husband was expected to assume the care of his wife's property and to defend and

prosecute suits concerning it. Indeed, the Legislative Assembly passed a law in 1838 making it the duty of the husband to prosecute a suit begun by the wife before marriage.<sup>258</sup> This was not intended as a hardship for women, and indeed it was sometimes offered as a defense by married women in suits to compel fulfilment of contracts. In 1848 the Iowa Supreme Court reversed a decision of the Mahaska District Court on this very ground. The facts of the case may be briefly stated. A married woman who had been living apart from her husband for two years, although he was within the State, made a contract concerning land which was to be deeded to her when she had paid a certain sum of money. When payment of a note was demanded she pleaded the defense of coverture. The Supreme Court ruled that she could not contract except for necessities for which her husband and not herself was liable. In reply to the claim that since she was living apart from her husband she was responsible for her debts, the court said "neither will a mutual agreement of separation release her from the legal restraint which the law has imposed upon her; nor can she in this way become restored to the rights which attach to a *feme sole*."<sup>259</sup>

In a case decided in 1849 a husband and wife had jointly contracted for buildings on the land belonging to the wife. An attempt was made to enforce a mechanic's lien, but the objection was offered that a married woman could not make a binding contract and her property could not be encumbered by another, since the law of 1846 declared that a married woman "shall possess the same [property] in her own right", although the management and profits belonged to her husband as at Com-

mon Law. The court, however, decided that the wife's property was liable for a debt incurred for such a purpose, since the husband and wife could sell or mortgage her real estate.<sup>260</sup>

The *Code of 1851*, in addition to the other sections concerning property rights, included the provision that "contracts made by a wife in relation to her separate property or those purporting to bind herself only, do not bind the husband." A married woman abandoned by her husband might secure permission from the district court to transact business as if unmarried, and this might include the right to control any property the husband might have left. The same Code also gave to married women the right to convey interest in real estate "in the same manner as other persons".<sup>261</sup>

The last named provision soon required court interpretation. If a married woman had authority to convey property, did she have power to convey it to her husband? A case involving this question was decided in 1858. A wife contracted with her husband to relinquish all claim to dower for a consideration. The Supreme Court held that she could contract with her husband even concerning dower, and under the *Code of 1851* she could be compelled to fulfil the contract, if fairly given, although the decision contained these words: "courts of equity will, in such cases, guard with jealous care the rights of the wife; the husband will be held to the strictest fairness and integrity; and the wife will not be deprived of her property, by any gift or transfer procured by fraud, circumvention, or undue, or improper influence. And while policy would dictate in such cases, that a trustee should be appointed, to protect and guard the inter-

ests of the wife, yet if none should be appointed, we know no rule which declares such gifts or transfers void, in the absence of fraud or unfair dealing. . . . Or, to state the proposition in another form, if, under the principles of the common law, courts of equity did in some, and indeed in many instances, give full effect and validity to her contracts, why should she not be bound by her engagements, in the absence of fraud or unfair dealing, under a statute which greatly enlarges her powers and privileges? . . . . Having the power to convey her real estate, in the same manner as other persons, no reason is perceived why she might not convey it to her husband, and in return, or in consideration thereof, she receive from him a grant or conveyance of other property. If so, why may she not, for a money consideration, make or execute a release of her interest in his real estate?"<sup>262</sup>

This decision of the court, however, was reversed two years later, when the Supreme Court decided that a wife could not contract with her husband except through a trustee: the provision in the *Code of 1851* that she could convey property as "any other persons", it was held, did not remove this restriction. In this case the wife had given the husband \$3800 of her own money with the understanding that he was to account for it. She afterwards left him and sued for the money, but the court ruled that she could not sue her husband unless she could prove cruelty or desertion, nor could she obtain separate support even out of her own money unless one of these charges was proven.<sup>263</sup>

The validity of a married woman's contract with any one other than her husband and the husband's right to

make contracts for the wife also required judicial interpretation. In one case the husband, claiming the right of agent, gave a mortgage on his wife's land. The Supreme Court, however, denied his right to bind the wife by a contract in which she did not join. The court also ruled that a married woman might maintain an action relating to her separate property without her husband's joining in it.<sup>264</sup>

Two interesting decisions were handed down at the following session of this court. In one, the judges ruled that the *Code of 1851* and the *Revision of 1860* intended to protect women in their property rights, but not to enable them to make contracts of all kinds or to carry on a general business. In the second case the wife's earnings were declared to belong to the husband.<sup>265</sup>

In 1858 the General Assembly empowered courts of chancery to correct mistakes made in conveying or encumbering a married woman's property or in relinquishing her dower to the same extent that they could correct errors in the conveyances or mortgages of other persons.<sup>266</sup>

The *Revision of 1860* provided that whenever a married woman was a party to a suit her husband must be joined with her, except in the following instances:

1. When the action concerns her separate property, or is founded on her own contract, she may sue and be sued alone.
2. When the action is between herself and her husband, she may sue and be sued alone. And in no case need she prosecute or defend by guardian or next friend.

The commissioners made the following comment on this section:

The substantive laws of Iowa, with justice, and but proper humanity, concede to married women certain rights in property. These rights, to be of any value, must be accompanied with adjective rights, which will secure their enjoyment. The right to sue follows necessarily from the right of property. The only reason why, under the common law, she could not sue at law was, that as she had no rights of property, she had no occasion to do so — as in progress of humanity, she began to have rights conceded to her — the right to sue, also arose, and as it was not recognized by common law, she had to go into a court of chancery to enjoy it. It would have been easier to have enacted a statute, allowing such suit at law; but there were many reasons why in that age, the equity court in such affairs was best. But all these have passed away, and as she is to have substantive rights which Iowa has already said, we can not see why she should not have all the rights logically sequent thereto, the same as anybody else. She also formally had to sue by next friend, and so forth, because she was incapable of making a contract, and had no property to pay costs with, if cast in the suit. But, these reasons no longer exist, and the disabilities based on them, should also logically cease.

Besides, if she trades and becomes liable, what sense is there in not allowing her creditor to sue her, as any other person, ignoring the fact of marriage, as much as in the case of a man, a fact which has no longer anything to do with the liability.<sup>207</sup>

The *Revision of 1860* also provided that when a married woman was sued alone, judgment could be enforced against her separate property only; but if she sued, judgment might be enforced against her own property “or her husband being brought in by rule, execution may issue against him also, unless for cause he show that he is not interested in the suit by the wife.” If the husband and wife were sued jointly, the wife might defend in her



own right; and if one neglected to defend, the other might defend for both.<sup>268</sup>

It is noticeable that the courts, also, began to recognize the independence of women so far as contracts were concerned. This recognition became especially marked during the period following the Civil War. Neither the husband nor the wife could convey separate property without the consent of the other, but married women gradually acquired freedom in other financial affairs.

In 1865 the Supreme Court decided that a married woman might execute a mortgage on her separate property to secure certain debts of her husband without becoming liable for other debts, the validity of such a mortgage depending upon whether it was obtained by improper influence. Nor could a judgment against the entire estate of the wife be enforced when she had mortgaged certain property to secure a debt of the husband. At about the same time the judges decided that a conveyance by a married woman had the same effect as one by a *feme sole* or by a man — an acknowledgment being necessary as to its validity in the case of third parties, but not between the parties themselves.<sup>269</sup>

In 1870 the section of the *Revision of 1860* relating to contracts by married women was repealed and the following substituted for it: "Contracts may be made by a wife, and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried."<sup>270</sup> This provision has remained practically the same in all the legislation concerning the rights of married women since 1870. In 1877 the Iowa Supreme Court made the following comment on the sections of the *Code of 1873* dealing with the subject:

These provisions, it must be admitted, completely emancipate the wife from all the bonds recognized by the common law, saving those of affection, and moral obligation. Being clothed with all the natural rights enjoyed by the husband which she may exercise free from his control, the law will hold her subject to the same rules which restrict and control the rights of the husband, and enforce his obligations assumed by contract or imposed by law for the protection of other members of society. Coverture, in Iowa, ought to be no shelter to the wife against the enforcement of the rights of others growing out of her contracts. As she has all the rights of the husband, she must assume all his obligations. When the law will imply a contract binding the husband, under the same circumstances it will raise one against the wife. In short, the statute, in bestowing upon her equal property rights with the husband, imposes upon her the same obligations he bears.<sup>271</sup>

The responsibility acquired by women under the law of 1870 and subsequent enactments appears not to have been entirely appreciated, for in a number of cases during the seventies there is evidence of a desire on the part of married women to escape liability by pleading coverture. The courts, however, nearly always declined to recognize such a plea as valid. In 1869 the Iowa Supreme Court ruled that judgments against married women on contracts they had a right to make were enforced the same as those against other persons and property acquired after the making of the contract might be taken to satisfy the debt. And again, in 1871 the same court handed down a decision that, if a married woman suffered judgment to be rendered against her in an action upon a note in which she was co-maker or surety for her husband, she could not escape liability by pleading coverture.<sup>272</sup>

A husband might act as agent for the wife, the Supreme Court decided in 1868, but could bind her only when authorized to do so when his acts were subsequently ratified by her — and such ratification must be proven by evidence stronger than that required to establish ratification by the husband of an act of the wife or between third parties.<sup>273</sup>

Moreover, the vendor of real estate, it was decided in 1871, was not relieved of his contract to sell land to a married woman on the ground that she was not bound by the contract, if she fulfilled her part of the agreement. To be sure the provision that certain contracts could not be enforced against married women was for their protection, but in this case the contract could be enforced in equity and the seller was required to execute the deed.<sup>274</sup>

Not only was a married woman permitted to make contracts with third parties: she might also make them with her husband. Indeed, in 1872 the Supreme Court ruled that a transfer of personal property from husband to wife was valid, although the contract was verbal and secret. Furthermore, the fact that a wife gave her husband notes or money to deposit for her in the bank did not subject them to the claims of the husband's creditors, since the ownership of the notes payable to the wife was evident without recording. Also, if a wife loaned money to her husband, taking a promissory note therefor, she stood as any other creditor and it was not necessary that the claim be recorded.<sup>275</sup>

It is difficult to determine just what the attitude of the judiciary has been towards the right of contract as regards married women. For example, the court decided in 1879 that under the *Revision of 1860* a married woman

did not subject her property to liability by becoming surety for her husband on a promissory note, since this was not a separate debt in the sense of relating to her separate property or purporting to bind herself only. "The policy of the statute being the 'more effectual protection of married women,' it must have been designed to affect such contracts as that of the case at bar, and the remedy thereon as administered in courts of equity."<sup>276</sup>

A year later, the Supreme Court declared that if a married woman signed a deed transferring land to her husband's son, the deed was valid even though the price was misrepresented to her, unless she would not otherwise have signed it. But if the paper was represented to her as a sale when it was really a gift, her dower right would not be barred by the transfer.<sup>277</sup>

There seems to be little change in the contract rights of married women after 1880, and very little litigation. In 1892 a bill was introduced into the Iowa Senate to give a wife the right to sue her husband without bond, but it was indefinitely postponed.<sup>278</sup>

The ten years following the adoption of the *Code of 1897* furnished a number of court decisions which point to the conclusion that by this time the wife's right to make contracts, even with her husband — except concerning dower right — was conceded. The difficulty now lay in safe-guarding the rights of third parties — particularly creditors of the husband. The courts apparently adopted the rule that a wife was to be treated as any other person unless there was evidence of collusion on the part of husband and wife to defraud third parties. Naturally such evidence was hard to find, and most of the decisions are in favor of the wife.

A man's creditors, it was decided in 1897, could not object to a married man's paying his wife ten per cent interest by oral agreement on money loaned by her. Also, a debt from husband to wife would sustain a chattel mortgage by the former to the latter against the claims of his creditors, although such a debt arose from a loan of money which she exacted from him as a condition of executing a conveyance of the homestead at a time when he could make her a valid gift, or before he became insolvent.<sup>279</sup>

On the other hand, a conveyance of property by the husband to the wife was invalid as against the claims of his creditors if made in consideration of money previously furnished him without special arrangement to repay it.<sup>280</sup>

A more unusual case arose when a man conveyed property to his divorced wife in consideration of past support for herself and child, although she had deserted him without cause. The court here ruled that this transfer was void as against his creditors in so far as the value of the land exceeded the amount owed.<sup>281</sup>

The legal fiction of the oneness of husband and wife continued to be recognized in the courts, except where modified or changed by express statutory enactments, and therefore a wife might not sue her husband on his personal contract during coverture, though she might bring action against him for property rights arising from a partnership.<sup>282</sup>

Indeed, it was decided in 1904 that a contract by which a husband agreed to give his wife one-half interest in all property coming into their possession in return for money furnished by her from her separate estate was

valid under section 3155 of the *Code of 1897*. This section also entitled a married woman to maintain an action against her husband for the payment of a promissory note given in return for money loaned to the husband; and if she did not take advantage of this provision, the statute of limitations would run against this debt as against any other.<sup>283</sup>

One other question concerning this subject requires brief mention. If contracts or conveyances concern both husband and wife and one refuses to sign, what is the status of the one who has made the agreement? The Iowa Supreme Court answered this question in 1905 by ruling that a contract by the husband alone is void as to husband and wife, and damages could not be obtained from the husband for failure to fulfil such a contract.<sup>284</sup>

#### IN THE MATTER OF HOMESTEAD

The lawmakers and judges of Iowa early recognized the advantage of keeping the family together, even at the expense of the creditors, and from this idea there developed the homestead right or the special exemption of property owned by the head of a family and used as a home. The *Code of 1851* declared that "the homestead of every head of a family is exempt from judicial sale" if there was no law to the contrary. Furthermore, a widow or widower, though without children, was to be deemed the head of a family while continuing to occupy the house used as such at the time of the death of the husband or wife. These provisions, with some minor additions, have been repeated in every code since 1851.<sup>285</sup>

As a general rule the husband was considered the head of the family and was entitled to a homestead right,

If he were dead the right devolved upon the widow, or if the homestead belonged to the wife the homestead might still be occupied by the husband after her death. In either case the debts of the owner, with a few exceptions, could not be collected from it. The *Code of 1897* also included divorced persons in this exemption; and the Supreme Court decided in 1880 that an unmarried woman who was caring for her sister's children was entitled to this homestead exemption.<sup>286</sup>

To insure this special exemption, however, the homestead must be platted in accordance with law; and this the husband could do without the wife's consent, although he could not sell or encumber it, once it was selected, without her agreement.<sup>287</sup>

In 1864 a case was decided which illustrates a peculiar idea of the property rights of the wife. It involved the legality of a deed to the homestead to which the husband had signed both his own and his wife's name. The Supreme Court decided that this was not the deed of the wife, although the evidence showed that the husband had signed other conveyances in the same way.<sup>288</sup> Furthermore, it was later decided that even if the wife signed a mortgage on the homestead in relinquishment of dower, the mortgage was invalid, since the presumption was that she joined only in the release of dower and not in relation to the homestead right, unless this was definitely stated.<sup>289</sup> The wife, the court decided, might devise a homestead in her name, subject to the rights of the surviving husband.<sup>290</sup>

In 1878 it was decided that at the death of the husband the wife was entitled to have the homestead assigned to her as a part of her dower if she so desired; but

she was not entitled to both dower and the homestead. This was true, the courts decided, even though the husband had promised a son the homestead if he remained on the farm. But there appears to have been some indecision as to later cases in which both dower and the homestead were claimed by the widow. At one time the Supreme Court decided that she could not have both; at another time it ruled that a widow might occupy the homestead for ten years and later claim her distributive share in spite of section 3369 of the *Code of 1873*. In case the widow definitely chose one or the other, the courts usually decided against any claim for the other share. If the distributive share was chosen, the homestead was no longer exempt and could be taken for debts contracted by the owner before that time.<sup>291</sup>

The husband has the same right to the homestead owned by the wife at her death.<sup>292</sup> Indeed, in the matter of homestead right, the law apparently makes no distinction between husband and wife, except to specify that the husband is the head of the family and entitled to the homestead right so long as he is alive or not legally disqualified for some reason.

#### THE ADMINISTRATION OF ESTATES

In the matter of administering on estates the early Iowa laws were not especially favorable to married women, although widows and single women were under no disability in this matter if they were otherwise qualified. A law passed in January, 1839, provided that the widow was to have the preference in choosing an administrator, if she wished to act and no administrator had been appointed by will; at the same time, the legislature enacted



a law that if the administrator appointed by will were under seventeen years of age, of unsound mind, convicted of any infamous crime, or a married woman, a new administrator must be appointed, unless the husband — in the case of the married woman — should give bond with her for faithful performance of duty.<sup>293</sup>

In addition to the general laws, the early legislators felt that it was their duty to oversee the work of the few women administrators. For example, on January 4, 1842, a special act was passed permitting an "administratrix" to sell land belonging to her husband's estate. Three-tenths of the land was assigned to her as dower and minute regulations were made for the conduct of the transaction.<sup>294</sup>

The *Code of 1851* made a decided change in the status of married women in respect to this matter. Married women were to be permitted to act as executors of estates independently of their husbands and a woman's marriage subsequent to her appointment did not render her incapable of serving.<sup>295</sup>

Since that time there has been little discrimination between men and women in the matter of settling estates, though naturally men are more frequently appointed since they are generally more accustomed to financial responsibilities. In 1884 the Supreme Court declared that there was no restriction in law upon the wife's right to act as administrator on her husband's estate if none had been appointed by will, but some discretion was left with the judge, for the wife might be insane or incapable of acting. In the case on trial, the resident mother instead of the non-resident wife had been appointed.<sup>296</sup>

## THE DISPOSAL OF PROPERTY

The wife's right to dispose of her own property by will, subject always to the dower or distributive share of the husband, has been generally recognized in Iowa. As a rule her right to do this has been the same as that of the husband. The *Code of 1851* provided that a married woman might "convey her interest in real estate in the same manner as other persons."<sup>207</sup>

## IN THE MATTER OF SUPPORT

Under the Common Law the husband was legally bound to support his wife and children in accordance with the social standards of the class to which he belonged; but if she refused to live where he selected the home, she could not demand support. All property owned by the wife and all money earned by the wife either before or after marriage became the husband's, and was liable for his debts. The wife, on the other hand, was not held responsible either for her own or her husband's debts or contracts, for she had no property from which the debt could be collected. The wife could purchase necessities and charge them to the husband, and he also became responsible for her debts contracted before marriage.

It appears that the early lawmakers were interested in preventing the expenditure of money for poor relief, and this is doubtless the motive for the law passed by the Legislative Assembly in 1839, which provided that married vagrants who had been arrested might be released if they furnished bonds and promised to support their families. Money earned by such men during the period of their arrest was to be used for the benefit of their

families. Indeed, a husband might be compelled to give bail to support his wife if she feared that he intended to abandon her.<sup>298</sup>

The Common Law rule that a husband must support his wife, however, was joined to the provision that the wife must live with her husband at any place of his choosing. If she refused he was not compelled to support her. Iowa law did not quite accept this rule, for even before statutes were enacted to that effect it was generally recognized that some conditions necessitated the wife's leaving home. However, a Territorial court decided in 1841 that a husband was not responsible for the debts of his wife if she left him; but if he drove her away he virtually gave her a bill of credit for necessities.<sup>299</sup>

Husbands whose wives left them, whether for good cause or not, frequently attempted to safeguard themselves and punish the wives by publishing notices such as the following:

#### TAKE NOTICE

I hereby forewarn all persons against trusting my wife, Gratia Hart, on my account, as I am determined to pay no debts of her contracting unless compelled by law.

HENRY HART.<sup>300</sup>

The *Code of 1873* provided that if either husband or wife abandoned the other for a year without providing for the family, the other might obtain authority from the district court to administer the property; but the Supreme Court decided that this did not affect the wife's Common Law agency by which she might carry on his business in his absence. All contracts thus made were declared valid.<sup>301</sup>

In 1887 the Iowa Supreme Court ruled that a wife who voluntarily left her husband and was not herself free from fault could not obtain separate support; but in 1894 it decided that the husband was liable for medical aid furnished the wife while the couple were living apart by agreement — the physician being ignorant of the separation.<sup>302</sup>

That husbands, in many cases, did not voluntarily provide for their wives and families is evident from the agitation for a criminal law governing this subject. At first it aroused only ridicule, as is shown by the following resolution introduced in the Iowa Senate in connection with a bill to provide penalties for the crime of desertion:

If any woman, without good cause, abandon or desert her husband, and shall refuse or neglect to provide for such husband, she shall be liable to the same penalties, and the same rules of evidence shall be applicable.<sup>303</sup>

The increasing problem of caring for such families, however, removed the question from the realm of the humorous, and in 1902 and 1904 bills to protect wives and families from such desertion were introduced but failed of enactment.<sup>304</sup>

At the next session of the General Assembly, Governor Cummins denounced desertion and urged that steps be taken to punish it as a crime "against the fundamental compact of society." The House passed a bill making desertion a misdemeanor, but the measure was indefinitely postponed in the Senate. Governor Cummins in his message in 1907 urged the passage of an act which would "make it a crime for a man to desert his family without good cause, and to refuse to support, without good reason, his wife and children." "We ought", he

continued, "to do something to check the rapidly growing habit of repudiating the most sacred obligations which a man ever assumes." A bill making desertion of a wife or minor children a crime and permitting the husband or wife to testify against the other in such cases was adopted by the legislature at this session.<sup>305</sup>

The General Assembly also incorporated the following section in the supplement to the Code adopted in 1907:

Every person who shall, without good cause, wilfully neglect or refuse to maintain or provide for his wife, she being in a destitute condition, or who shall, without good cause, abandon his or her legitimate or legally adopted child or children under the age of sixteen years, leaving such child or children in a destitute condition, or shall, without good cause, wilfully neglect or refuse to provide for such child or children they being in a destitute condition, shall be deemed guilty of desertion and, upon conviction, shall be punished by imprisonment in the penitentiary for not more than one year, or by imprisonment in the county jail for not more than six months.

Furthermore, in all such prosecutions the husband or wife might testify against each other.<sup>306</sup>

In 1906, just before the adoption of the sections above referred to, the Iowa Supreme Court decided that a husband who expelled his wife from the home must support her whether the act was justifiable or not.<sup>307</sup> Two years later it ruled that a man could not lawfully abandon his wife and minor children except for a cause that would entitle him to a judicial separation.<sup>308</sup> The section in the *Supplement to the Code of Iowa, 1907*, transfers the action in case of desertion from a civil action between husband and wife to a criminal proceeding in which the

State is the plaintiff but desertion is still one of the causes for which a divorce may be granted.

#### LIABILITY FOR DEBTS

In America the wife's property has generally not vested in the husband, although the early laws made few restrictions so far as the real control of it by the husband was concerned. The *Code of 1851* provided that the personal property of the wife should remain hers after marriage, although it might be taken for the husband's debts unless she filed a notice of her ownership with the county recorder. This action also enabled her to collect her property from the husband's estate. The intention, of course, was the protection of third parties; consequently bank stock and similar securities did not need to be recorded, since the name of the owner was evident. Contracts made by the wife concerning her separate property did not bind the husband. All these provisions referred to debts other than family expenses, since the Code provided that "the expenses of the family, the education of the children, and such other obligations as come within the equity of this provision, are chargeable upon the property of both husband and wife or of either of them, and in relation thereto they may be sued jointly or the husband separately." In 1913 it was provided that either the husband or the wife could be sued separately as well as jointly.<sup>309</sup>

Since it has been possible to collect family expenses from property belonging to the wife, it will be of interest to note the court decisions as to what constitute family expenses. As might be expected the rulings have merely dealt with particular cases and have not established any

general standard. The separate property of the wife has been held liable for the price of a piano used by the family, although it was purchased by the husband on his individual credit; but a reaping machine was not considered a family expense, nor was the cost of feed for a horse used in the husband's business but not used by the family.<sup>310</sup>

When the money of the wife was used by the husband for ordinary living expenses with her consent and without any agreement for repayment, the Supreme Court held that she could not recover it from the husband's estate; but one who advanced money to the husband for family expenses could not claim a lien on the wife's separate property unless the loan was made at her request, or the original account was assigned to the lender.<sup>311</sup> Neither could the wife be charged with attorney's fees and interest at ten per cent on a debt, because her husband gave a note to that effect, although the debt itself could legally have been collected from her property. Indeed, the court ruled that she could not be charged with money borrowed by the husband and used for family expenses.<sup>312</sup>

In 1894 an unimportant but interesting question came before the Supreme Court for decision. Was a married woman liable for the price of an atlas purchased by the husband in spite of the wife's protest? The husband gave a note, and upon his failure to pay the wife was sued. The court decided that this was not a family expense, especially since she opposed the purchase. This conclusion was not only reasonable but was supported by precedent, for in an earlier case the court had decided that the husband did not have to pay for supplies not

actually necessary when he had forbidden such purchase.<sup>313</sup>

Some of these cases present peculiar features. For example, in 1897 the Iowa Supreme Court decided that a diamond shirt stud, purchased and worn by the husband, was a family expense chargeable upon the wife's estate because it was used to fasten clothing. On the other hand, a later decision ruled that the wife's property could not be held for the expense of caring for her insane husband at Independence, since such treatment was not a family expense. The reason for this conclusion was based on the Common Law which did not hold the wife financially responsible for her husband's care or support; since no statute made her liable for such care, the Common Law was still in force. A case similar to this in law but not in equity was decided in 1909. This was a claim against the wife for her husband's board while he was absent from home in contemplation of a separation. This, too, was decided in favor of the wife under the Common Law.<sup>314</sup>

Under section 3165 of the *Code of 1897* it was decided by the courts that a judgment against the husband alone for family expenses might be enforced against the property of the wife, but she might refuse to expend professional earnings unless her husband promised to repay her; and the transfer of property as a result of such a promise was legal and could not be set aside by the husband's creditors.<sup>315</sup> From these cases it is evident that the wife's legal protection in this respect depended on her ability to make bargains with her husband.

Among the latest decisions concerning the term "family expenses" is one which held that the wife could not be



compelled to pay for beer purchased by the husband, evidence that it was used upon the table being immaterial.<sup>316</sup>

It is evident from a study of such cases that nothing has been decided except that a married woman is responsible for family expenses if she has property in her own name; but no rule has been established as to what constitutes family expenses.

Another aspect of the question of the financial responsibilities of husbands and wives relates to their liability for the other's debts when not for family expenses. It is clear that at the time of the adoption of the *Code of 1851* the husband still exercised considerable control over the wife's property, for in 1853 a case was decided by the Iowa Supreme Court which involved the validity of a lease signed by the husband alone, affecting land held by the wife at the time of her marriage. At the time the dispute arose the couple were divorced, but the husband still claimed that the lease was valid. The court decided that such a lease bound only the husband and ceased when his interest in the property ended — as it did when the divorce was granted. Otherwise, the judge who wrote the decision remarked, the right of curtesy might be made permanent.<sup>317</sup>

Another case decided at about the same time shows the contrast between the Common Law and statutory law in regard to the wife's position. The question involved in this case was whether or not the husband was liable for debts contracted by the wife before marriage. The court held that under the Common Law he was responsible for such debts, but under the *Code of 1851* he was not liable if the debts at the time purported to bind her

only.<sup>318</sup> Although the Code plainly stated that the wife's property was not liable for the husband's debts if the ownership was known, yet that very question came up in 1854 when an attempt was made to hold the property, bought and managed by the wife, for the husband's debts. The court had little difficulty in deciding that the wife's property could not be held, especially since the husband's creditor knew of the wife's ownership and had himself had financial dealings with her.<sup>319</sup>

The Iowa Supreme Court has been extremely favorable to the property rights of married women as against the claims of the husband's creditors, and the laws have attempted to protect her rights without injuring third parties. It is interesting to follow the steps by which the lawmakers arrived at the conclusion that it was so reasonable for a married woman to own property that special notice need not be given of that fact.

The *Revision of 1860* made few changes in the property rights of married women. Notice of the wife's ownership was required except for bank stock and similar forms, which need not be listed unless given to the wife by the husband. The husband was not liable for the debts contracted by the wife concerning her separate property; nor was she liable for his debts, except for family expenses. A married woman, if abandoned by her husband, might secure permission from the court to act independently and might then manage the husband's property — if he left any. The husband could obtain the control of the wife's property in like manner if she deserted him.<sup>320</sup>

A decision which was rather unusual in its interpretation of women's property rights was handed down in

1864, reversing the decision of the lower court. The case may be briefly summarized. W. M. Roselle and his wife, Lucinda Roselle, left a debt of \$200 in Piqua, Ohio, when they came to Iowa. The creditors got a judgment and levied on a house purchased by the wife in Burlington, Iowa, with money earned, as she claimed, by millinery work. The court decided that it did not matter whether it was her money or her husband's, since the *Code of 1851* superseded the Common Law only in respect to property inherited, and not to that earned by her. By the rules of the Common Law, which it was declared governed this case, "the money which Lucinda earned in dressmaking vested at once in her husband; and if she purchased real estate with it, taking the title in her own name, she holds the property simply in trust for her husband and his creditors."<sup>321</sup>

This reactionary decision practically took away from the wife her right to her wages and earnings, for it limited the provisions of the *Code of 1851* and the *Revision of 1860* to inherited property. It was not, however, agreed to by the General Assembly and in 1866 a law was passed providing that the earnings of a married woman whose husband did not support her should be held in her own right exempt from her husband's debts, although they could be taken for her own debts and for family expenses unless protected by special laws. Property purchased with such earnings was also exempt, and it was not necessary for the wife to file a notice of her ownership.<sup>322</sup> It is difficult to realize that previous to the passage of this law a husband might entirely neglect his wife and family, and yet, if the wife unaided managed to acquire any property, he might incur any indebtedness he pleased and his

creditors could collect from the wife. Furthermore, it was decided by the Supreme Court, that same year, that the wife might sell or trade her separate property for other property without subjecting the profits to seizure for the payment of her husband's debts.<sup>323</sup>

In 1870 the section of the *Revision of 1860* concerning the liabilities of husband and wife for the debts of the other was somewhat modified. The new law reads in part as follows:

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and except as herein otherwise declared they are not liable for the separate debts of the other; nor are the wages, earnings, or property of either, nor is the rent or income of such property, liable for the separate debts of the other.<sup>324</sup>

In spite of this apparently clear rule that neither husband nor wife was responsible for the debts of the other contracted before marriage, the right to satisfy a judgment against the husband for debts contracted before his marriage by levying on the wife's property was claimed in a case decided in 1873. The judge of the lower court gave the following as a part of his instructions to the jury: "The separate and individual property of the wife, and the income and rent of her property are not subject to the payment of the debts of the husband that were contracted prior to their marriage, even though the same should be left under the control of her husband, and no notice given of her ownership."<sup>325</sup> The Supreme Court affirmed the decision of the lower court and denied the liability of the wife for such debts.

This case illustrates the difference between the old Common Law and the statutory law of Iowa concerning

the liability of the wife for the husband's debts. Under the Common Law the wife was not responsible for any of her husband's debts — indeed, she could not be held responsible for her own debts, for she was not recognized as a legal person and all property owned by her at marriage or acquired by her after marriage became the property of her husband. As a result of this rule the wife's property could be taken for the husband's debts whether incurred before or after marriage, for it was not hers but his as soon as the marriage service was completed. The husband, however, became responsible for all debts of the wife and for all damages for torts committed by her. Under the Iowa law, as interpreted by this decision, the wife's property did not vest in the husband and could be held for his debts only when she allowed the husband to manage it and so gave third parties reason to believe that he owned it. In the case of debts contracted before marriage the wife's property could not be held liable under any circumstances.

A notice published in a newspaper in Iowa in 1886 illustrates this change in the status of married women. It was based upon the public warnings frequently issued by husbands and had more standing in law than such notices, since the husband could not escape the just debts incurred by the wife for support by a public statement while notice of the wife's ownership of property was sufficient to exempt it from the husband's debts. The ironic parody was as follows:

To whom it may concern:

J. E. Ballard having left my bed and board, without just cause and provocation, I will pay no more debts of his contracted from this date.

MARY E. BALLARD.<sup>326</sup>

The rule that a wife must file a notice of her ownership if she wished to hold her property exempt from the debts of her husband contracted after marriage was omitted in the *Code of 1873*. The section dealing with the question was drafted as follows: "When property is owned by either husband or wife, the other has no interest therein which can be the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as provided in this chapter." This exception referred to debts for family expenses. No notice of ownership was required.<sup>327</sup>

It is clear that the attempt to protect the wife's property sometimes led to fraud and injustice to others. For example, in the case of *Miller v. Hollingsworth*, decided in 1873, the wife refused to pay for lumber purchased by the husband for use on her property with her knowledge and consent, on the ground that she could not be compelled to pay her husband's debts. The court decided that the creditor could take a lien on the wife's property, since the debt was incurred for her benefit and with her consent.<sup>328</sup>

In a later case property in the wife's name which had been paid for with money loaned by the husband who was insolvent, and was managed by him, was held subject to the claims of the husband's creditors to whom he owed money at the time the money was given to the wife.<sup>329</sup>

The reason for the decisions in these cases is evidently the appearance of fraud. Where the suggestion of an agreement between husband and wife for the purpose of defrauding third parties is absent, the courts

have usually protected the wife's property. For example, in the case of *Hoag & Steere v. Martin*, the Supreme Court decided that land purchased by the wife with money paid her for taking care of her husband's mother and other money earned by her could not be held for the husband's debts on the ground that his creditors believed it to be his; nor could the crops from a farm, worked by the wife and sons, be held, in spite of the fact that the husband attended to the business and even listed the property with the assessor as his own.<sup>330</sup>

In 1894 section 3072 of the *Code of 1873*, which provided for the exemption of certain property of a debtor who was the head of a family, was amended so that any man who was the head of a family and any woman whether she was the head of a family or not might hold fifty dollars worth of poultry exempt from execution. Why this particular form of property should be specifically mentioned is not clear. Two years later the General Assembly passed a law that no lien on exempt personal property was valid unless husband and wife signed it, if the owner was married.<sup>331</sup>

The *Code of 1897* repeated most of the provisions of the *Code of 1873* concerning the liabilities of husbands and wives for each other's debts. The Common Law principle that the husband was held responsible for debts incurred for or by the wife for necessities suitable to her station was retained, but it was provided that he was not responsible for damages for civil injuries committed by the wife unless he would be liable if the marriage did not exist. Either husband or wife might bring action against the other to recover property belonging to them.<sup>332</sup> Very little that is new is to be found either in the *Supplement*

*to the Code of Iowa, 1907* or in the two following supplements; indeed, very little remains to be done in respect to women's property rights except in the matter of the family property which is now almost entirely in the hands of the husband.

In addition to the cases already cited, several others deserve mention here, although they involve somewhat different aspects of the question of financial responsibility. Two of these cases deal with the responsibility of a husband for the support of an insane wife who had been sent to a hospital for the insane. The first decision, handed down in 1877, was that under Chapter 26 of the laws of 1874 the husband was not liable for the wife's expenses. The second, in 1909, declared that under section 2297 of the Code the husband was a "relative" and could be compelled to reimburse the county for the expense of caring for his insane wife at a hospital.<sup>333</sup>

A third case involves the duty of a husband to pay for the support of his wife and also indicates under what circumstances a wife might refuse to live in the home selected by the husband and still be entitled to support. The district court judge ruled that "the husband, in law, is not bound to furnish board and necessities at any place other than at his own choosing, and it is the duty of the wife to accommodate herself to the surroundings and conditions of the husband". The Supreme Court, however, did not concur in this decision. If this were so, the Supreme Court declared, the husband might require the wife to live in a totally unfit place.<sup>334</sup> In 1910 the Supreme Court ruled that it was the duty of the husband to see that his wife had proper burial, but if she left an estate he could recover the amount from it.<sup>335</sup>



## X

### WOMEN IN INDUSTRY

THE women in any community may, for convenience, be considered in four groups as regards source of support and employment. Of these the first may be called the leisure group, since it includes all women who possess sufficient means to live without working and all married women whose husbands are able to support them without any economic contribution from the wives. This does not mean that these women are idle, but rather that there is no interrelation between their work and their manner of living.

From this class, in which the women are almost wholly free from economic responsibility, we pass by almost imperceptible degrees to a second class which includes all women working at home without any specified remuneration. Married women, of course, constitute the great body of this group. They contribute more or less effectively to the economic welfare of the family, but they are not included in the enumeration of women engaged in "gainful occupations". Some of these women have sufficient leisure for recreation and intellectual development, and have enough economic independence to make their lives very satisfactory; but many, on the other hand, are overworked and are denied any control of the family income. The only amount guaranteed to the wife by law is support and a distributive share in the husband's estate at his death. The wife's position depends very

largely upon the husband's earning ability and upon his attitude toward her, since, although the law may guarantee a wife certain rights, it is frequently true that the women whose rights are denied are the ones who are either ignorant of the laws or are unable to assert their rights.

A third class is composed of women engaged in business or in professional pursuits. Here belong lawyers, physicians, business women, teachers, librarians, trained nurses,<sup>336</sup> and all women who occupy executive or administrative positions. These women are frequently underpaid; but working conditions are usually good and the general standard of intelligence and training is above the average. This class, having already been considered in a separate chapter, requires no further discussion in this place.

The women who perform manual labor for wages make up the class usually in mind when the condition of working women is discussed. In this group belong factory operatives, telephone employees, workers in laundries, hotels, and restaurants, clerks in stores, and those employed in unskilled trades.

#### NUMBER OF WOMEN WAGE EARNERS

It is difficult to secure statistics for the various branches of industry, since the plans of enumeration differ and the industrial groups change from time to time. An idea of the number of women employed outside the home and some of the industries followed may be gained from the following table which can be only approximately correct since a wide divergence in the plans of the enumerators is evident.<sup>337</sup>

## 146 LEGAL AND POLITICAL STATUS OF WOMEN

	AGRICULTURAL	PROFESSIONAL AND PERSONAL	DOMESTIC	TRADE AND TRANSPORTATION	MANUFACTURING AND MECHANICAL	CLERICAL	TOTAL
1870	356	19,953		59	2,758		23,126
1880	1,386	34,357		660	8,442		44,845
1890	8,094	18,800	33,016	4,431	16,076		80,417
1900	8,132	23,285	43,350	10,820	21,296		106,883
1910	9,557	28,864	44,031	13,299	24,466	10,802	131,514
1915	4,495	30,307	32,318	28,392	14,200		110,115

Many of the apparent variations in these statistics are of interest because of certain changes in status which they indirectly reveal. For example, the 19,953 women said to be employed in "professional and personal" service in 1870 included the group later classed as domestic employees; only 4472 of them were teachers, and a very small number were in strictly professional work.

The decrease in the total number of women gainfully employed according to the Iowa census of 1915, as compared with the number given by the Federal census in 1910, is probably due to a less inclusive enumeration of women occasionally employed outside the home, for it is most apparent in the number of women engaged in agriculture, domestic service, and manufacturing; while there is an increase in the number of women in professional work and in certain commercial lines.

On the other hand, it is possible that the number of women employed in Iowa was really smaller in 1915 than it was in 1910, since the State has been prosperous and there has been less necessity for women to work outside of the home. Under war conditions an increase in the number of women employed is very probable.

In 1910 it was estimated that 15.5% of the women of Iowa over ten years of age were engaged in remunerative employment, and the majority of women so employed belonged to the group of industrial workers. Only ten States had a smaller per cent of women working at that time.<sup>538</sup>

#### PROTECTION OF WOMEN IN INDUSTRY

Since Iowa is not predominantly an industrial State and the number of women employed is relatively small, little attention has been paid to conditions surrounding them while at work. It has been taken for granted that women were responsible for any contract they made, and that it was not the duty of the State to interfere if the work was dangerous, the pay inadequate, or the hours too long. Competition was considered beneficial, and women must take the consequences if they entered the industrial field.

Gradually thinking people have awakened to the fact that competition is not beneficial to those workers who are too inexperienced or uneducated to determine their best interests. The limited number of employments open to women has also handicapped them in the struggle for a living. But aside from the personal interest of the women themselves, it has also come to be realized that many of these women are or will become mothers and what affects their intelligence, health, or morals concerns also the future of the State's citizens.

Iowa has been slow to act in this matter, partly because of indifference and partly because women have, until quite recently, been employed largely in establishments where only a few were needed and where the employer worked with them. It is probable also that the

opportunity for education and the economic freedom of women made special protection less necessary than in States where home conditions forced girls to work at an early age.

As the number of women workers increased, however, and conditions changed from rural to urban and manufacturing developed, the need for the special protection of workers, and especially of women and girls, increased. As early as 1874 a law was passed excluding children and women from work in mines. The first act which dealt with the welfare of women workers was passed in 1892, when the General Assembly enacted a law requiring employers to provide seats for female employees and to permit them to use them whenever the work would permit. Violations of this law were punishable by a fine of ten dollars, and the county attorney was assigned the duty of prosecuting violators. Ten years later the Commissioner of Labor was given supervision over the matter,<sup>339</sup> but the law appears to be difficult to enforce, because so much is left to the employer and the fine is so small.

According to the *Code of 1897* no woman could be employed in a mulct saloon. A law passed in 1906 forbade the employment of any girl under sixteen in any occupation requiring constant standing or at any dangerous employment.<sup>340</sup> What is sometimes called the Factory Act of 1902 repeated the prohibition as to dangerous employments for children under sixteen and also stated that no person under that age and no female under eighteen was to be permitted to clean machinery while in motion.<sup>341</sup>

These laws include practically all legislation for the protection of women workers in Iowa. No attempt has

been made here to cover labor legislation in general, since this study deals only with laws relating specifically to women. Neither have child labor laws been included except where distinctions are made between boys and girls. As a matter of fact, Iowa has little labor legislation of any kind. At present this State is one of the six in the United States without any limitation upon the number of hours women may work.<sup>342</sup>

Attempts have been made to remedy this situation, but either the interest of employers, the indifference of the legislators, or a failure to realize the importance of safeguards have thus far prevented the success of such measures. For example, a bill was introduced in the Iowa Senate in 1917 to prohibit the employment of women more than ten hours a day or more than fifty-four hours a week and also between 10 P. M. and 6 A. M., except certain groups such as stenographers, managers, and women in executive or administrative positions. No women under twenty-one, except telephone and telegraph operators, were to be permitted to work after 9 P. M. and these only if over eighteen years of age. Forty-five minutes intermission for dinner was required except in the case of those working less than eight hours a day, and no woman employee was to be permitted to work more than six hours without such intermission. This act did not apply to women in domestic service, graduate nurses, and those working on farms and in canning factories. Each employer was to be required to post a list of the women employees, together with the hours of work for each. Small fines were provided for the infraction of any of these requirements. This bill was lost in the sifting committee, as was a similar one in the House. Another bill

which was intended to prohibit the employment of either men or women in hotels or eating houses more than six days a week was also lost.<sup>343</sup>

In 1913, however, the General Assembly made provision for a woman factory inspector,<sup>344</sup> and Mrs. Ellen M. Rourke was appointed to this position. Her duty consisted largely of investigation, since there were few laws to enforce. Her reports of 1914 and 1916 deal largely with the results of her study of conditions among certain groups of working women.

The first report dealt with women in stores and in hotels and restaurants in various cities of the State. Not all of the employees were reached, nor was the number of places visited large, but the report, nevertheless, gives an insight into the working conditions of Iowa women. The second report took up two other classes of workers, also presenting different requirements and working conditions. These were telephone operators and women workers in laundries.

Wages ranged from five dollars a week to twenty-one, but the larger per cent of these women received between six and seven dollars a week — the rate being slightly higher for those living away from home than for those at home. Iowa, it may be said, has no minimum wage law for either women or men. Working conditions were reported as fairly good and with a tendency to improve. The hours of work varied from seven and one-half to eleven hours a day and from fifty-five to sixty hours a week, but some women were working thirteen hours a day in rush seasons.

The relation of education to the kind of work secured is suggested by the report that forty-two per cent of the

women working in laundries and fifty-four and four-tenths per cent of those employed in hotels and restaurants had left school between the second and eighth grades; while forty-nine and eight-tenths per cent of the store employees and eighteen per cent of the telephone operators left school between the fourth and eighth grades, and seventy-eight and five-tenths per cent of the telephone workers had a grammar school education.<sup>345</sup>



## XI

### RECAPITULATION OF LEGAL STATUS

THE foregoing chapters indicate how, step by step, women in Iowa have secured rights and privileges denied to their sex by the Common Law. Once acquired, these rights have seldom, if ever, been lost. As a result the progress of women towards equality in civil affairs has been sure although the reform has been gradual. Moreover, this advance has been free from much of the bitterness which has characterized struggles where rights fully recognized and strongly desired have long been denied.

It has been seen that, at the beginning of Iowa history, the rights of women — especially married women — were largely fixed by the Common Law, which denied to the wife a separate personality. To-day, women may attend all State supported schools from the kindergarten to the University. They may also be employed as teachers in any of these schools, and the proportion of women teachers is constantly increasing. The professions also are open to women on equal terms in so far as they are regulated by the State.

In the matter of property rights, men and women are also theoretically equal. Even married women may own property, make contracts, and prosecute and defend actions in court without being subject to the control of their husbands. The distributive share in the property of the other spouse is the same for husbands and wives,

and the requirements for the transfer of real estate are also identical for both. In one respect only does it appear that this rule is unfair to wives. The property acquired by the joint efforts of the husband and wife is usually in the husband's name. In the case of real estate the wife can not be deprived of her distributive share without her consent; but even this may give her only one-third of the property; while personal property may be wasted or given away by the husband during his life without the wife's knowledge or consent.

The husband, however, is still legally responsible for the support of his wife, as well as of the minor children; while the wife has no corresponding responsibility for the husband's maintenance, except that the wife is jointly liable for the expenses of the home if she has money of her own. The desertion of a destitute wife or minor children by the husband or of such children by the mother is now a criminal offence punishable by a penitentiary sentence.

The mother is joint guardian of her minor children and is likewise responsible for their support and education. A comparison of the court decrees in divorce cases shows that the mother is usually preferred to the father in the awarding of minor children if other things are equal. Mothers' pensions are also provided to enable widows or wives whose husbands are inmates of State institutions to maintain their children at home.

The causes for which divorces may be granted in Iowa number five for women and six for men, although the sixth cause for which a husband may secure a divorce makes little difference. The five causes common to both are adultery, desertion, drunkenness, inhuman treatment,

and conviction for a felony. Wives, however, in this State secure a majority of the divorces. From 1886 to 1906 this proportion was about three to one.

The position of women in criminal affairs is supposed to be the same as that of men. As a matter of fact, it is probable that women are usually treated more leniently than men. This is partly due to the influence of the Common Law rule that a wife was exempt from punishment in many cases if the husband was present, and partly to the fact that decisions in criminal trials are made by juries of men only and are unconsciously influenced by the spirit of chivalry. On the other hand, in cases involving certain forms of immorality, the jurors may be influenced by sex loyalty. Women may testify, however, on the same terms as men, and may also plead cases in any Iowa court.

In the field of industry women are free to make contracts and collect their wages even when married. But Iowa has been slow, indeed, to enact protective legislation. This has been due partly to the fact that comparatively few women in Iowa are engaged in factory work or similar employments. Doubtless a sense of equal ability on the part of most Iowa women and the general conservatism of the State have also been factors in retarding such legislation. In 1915 about 110,000 women were reported as gainfully employed outside the home.

It is evident, therefore, that in civil affairs no marked injustice to women is to be observed in Iowa: discrimination against them is confined almost entirely to political matters. The path to this equality, however, has not been free from laws and court decisions which have threatened the property rights of wives, their right to obtain justice

through legal procedure, the claim of mothers to their children, and the right of all women to choose their occupations or professions without legal restriction or discrimination. That the civil status of women in Iowa is so fortunate is due to a variety of causes. Pioneer life fostered independence and equality. Women who settled here have been, for the most part, intelligent and educated; while the lawmakers and judges have been responsive to the demand for reform when once their attention has been called to unjust treatment of women.



**PART II**  
**POLITICAL RIGHTS OF WOMEN IN IOWA**



## XII

### EQUAL SUFFRAGE IN THE UNITED STATES

So closely are the political movements in one State related to similar movements in other States and throughout the Nation that it will be well to follow briefly the growth of equal suffrage in the United States before tracing its history in detail in Iowa.

#### EQUAL SUFFRAGE PRIOR TO THE CIVIL WAR

The equal suffrage or equal rights movement may be said to have appeared in Massachusetts as early as 1638 when the discussion of religious topics by Mrs. Anne Hutchinson incurred the double condemnation of the magistrates — first because of her criticism of the teachings of the men in authority, and secondly because, being a woman, she had, in their opinion, no right to speak at all.<sup>346</sup>

Another woman who at an early day asserted her equality before the law was Margaret Brent of Maryland, a sister of Giles Brent, a prominent planter. She received a grant of land in 1638 and for a number of years occupied a position of influence and authority, acting as the administrator of Governor Leonard Calvert's estate, as the guardian of his children, and as the representative of the absent Lord Baltimore.<sup>347</sup>

Even during the Revolution there appeared voices prophetic of the future, although it can not be said that there were serious demands for equal suffrage at the



time. Abigail Adams wrote to her husband on the occasion of the Declaration of Independence and the discussion of the new government to be established: "I long to hear that you have declared an independence . . . And by the way, in the new code of laws . . . I desire you would remember the ladies, and be more generous and favorable to them than your ancestors. Do not put such unlimited power into the hands of the husbands! Remember, all men would be tyrants if they could!" Mercy Otis Warren was likewise among the few who urged the recognition of women in the new Democracy. It was, indeed, a significant coincidence that Thomas Paine's *Rights of Man* and Mary Wollstonecraft's *A Vindication of the Rights of Woman* were published during the same decade, although in different countries. Thomas Paine was probably the first prominent man in America to advocate equal political privileges for women — that is, a real democracy of men and women.<sup>348</sup>

It is a curious fact that women were legal voters in New Jersey from 1776 to 1807, under the Constitution which was adopted two days before the Declaration of Independence. This instrument provided that "all *inhabitants*" who possessed certain age and property qualifications might vote; and the legislature in 1790 specifically recognized that this provision was intended to include women by the use of the double pronoun "he or she" in a law concerning residence qualifications. In 1807, however, the legislature disqualified women in spite of the Constitution; and in 1844 the Constitution was itself revised so that only "white male citizens" could vote.<sup>349</sup> This premature grant of suffrage was largely the result of Quaker influence, since among them

men and women were considered equal. Its failure was due partly to the social standards of the time which limited women's activities to household duties, and partly to the development of the struggle over negro suffrage.

The idea of equal suffrage was not seriously considered, much less adopted, by the founders of the new republic. Although women were generally treated with consideration, Harriet Martineau, who visited the United States in 1837, found the position of the women so dependent and restricted that she raised the question whether "the principles of the Declaration of Independence bear no relation to half of the human race?"<sup>350</sup>

It was not until about 1840 that the women of the United States began to realize the disadvantages of political inequality. Among those who opposed slavery there were many women who came to understand the value of the franchise in securing reforms. At the anti-slavery conference held in London in 1840 Lucretia Mott, Elizabeth Cady Stanton, and Esther Moore — American women delegates — were refused admission in spite of the protests of Wendell Phillips, Henry B. Blackwell, William Lloyd Garrison, and others.<sup>351</sup> Stung by this humiliation and by the general disregard of equal rights, these women began an agitation for the removal of the political disabilities of women. The question was discussed in the New York constitutional convention in 1846, and it is said that later defenders of the equal suffrage cause have seldom added anything to the argument made there by George William Curtis.<sup>352</sup>

Perhaps the first attempt at organized effort among the women was the call for a convention to meet at Seneca Falls, New York, in July, 1848. The call was issued by

Lucretia Mott, Martha Wright, Elizabeth Cady Stanton, and Mary Ann McClintock; and the meeting was presided over by James Mott, the Quaker reformer. The convention proclaimed the equality of men and women and demanded for women their "immediate admission to all the rights and privileges of citizens of the United States", including the right to vote. Two years later there assembled at Worcester, Massachusetts, the first National Woman's Rights Convention held in this country. The call for this meeting was signed by Lucy Stone and fifty-five other women and by thirty-three men, many of whom were prominent in anti-slavery circles.<sup>353</sup>

It is a fact worthy of notice that the women's rights movement and the abolition movement were very closely associated. The social conscience of the people was being slowly awakened, and women resented the fact that they were without political power to assist in putting down what some of them felt was a gigantic evil. At the same time Sojourner Truth, the negro woman who traveled through the North advocating the abolition of slavery, dismissed the women's rights question with the remark that "Ef women want any rights more'n dey's got, why don't dey jes' *take 'em*, an' not be talkin' about it?"<sup>354</sup>

#### EQUAL SUFFRAGE SINCE THE CIVIL WAR

The Civil War resulted in the freedom and the enfranchisement of the negroes who were for the most part illiterate and unprepared for the duties of citizenship. This grant of suffrage to a class of men who were not prepared for citizenship had two results on the woman suffrage question. The friends of the measure insisted

that it was unjust to permit the ignorant negro to vote and at the same time continue the disfranchisement of white women who were better qualified. On the other hand, enemies of the extension of suffrage to women pointed to the failure of negro suffrage as a proof that it was unwise to further increase the electorate; while those who were opposed to the enfranchisement of the negroes frequently urged that it was no more unjust to deprive the negroes of the suffrage than it was to disfranchise the white women.

In 1869 Wyoming, then a Territory, granted the franchise to women almost without opposition; and in 1890 the State of Wyoming entered the Union with equal suffrage, thus becoming both the first Territory and the first State to fulfil the pledge of democracy in regard to the franchise. When it was suggested in Congress that the equal suffrage clause in the Wyoming Constitution might have to be abandoned, the Wyoming legislature replied: "We will remain out of the Union a hundred years rather than come in without woman suffrage."<sup>355</sup>

Most States, however, preferred a limited application of the principle of equal suffrage, even if the men were willing to concede to women the justice of a share in political power. Thus there developed five general forms of State or local enfranchisement: complete suffrage, school suffrage, municipal suffrage, tax suffrage, and presidential suffrage. In many cases there was a combination of these general forms, so that a great diversity of provisions is to be found in the various States. A few instances will illustrate the different forms under which the principle of equal suffrage has been applied.

Kansas adopted a limited form of school suffrage in

1861, an experiment that was later adopted by the following Commonwealths: Michigan in 1875; Minnesota in 1875; Colorado in 1876; New Hampshire in 1878; Oregon in 1878; Massachusetts in 1879; New York in 1880; Vermont in 1880; Nebraska in 1883; New Jersey in 1887; Kansas in 1887; North and South Dakota in 1887; Arizona in 1887; Montana in 1887; Oklahoma in 1890; Illinois in 1891; Connecticut in 1893; Ohio in 1894; Delaware in 1898; Wisconsin in 1900; and New Mexico in 1910. Iowa adopted a form of tax suffrage in 1894, and Louisiana passed a similar law in 1898.

In the meantime, some of the other western States followed the example of Wyoming by adopting complete suffrage. Colorado took the step in 1893; while Idaho and Utah enfranchised their women citizens in 1896. Then for fourteen years the cause of constitutional equal suffrage appeared to be unsuccessful, though no serious attempt was made to abolish it in the four States where it had been established. It is now evident that this was a period of growth and not of stagnation, since seven States adopted constitutional equal suffrage during the four years between 1910 and 1914: Washington in 1910; California in 1911; Arizona, Kansas, and Oregon in 1912; and Nevada and Montana in 1914. The Territory of Alaska adopted equal suffrage in 1913.

By 1914 practically all the far western States had removed the sex qualification for voting. Eastern States were more conservative, and it was not until 1913 that any progress — aside from the limited school or bond suffrage — was made east of the Mississippi River. In that year the Illinois legislature, acting under authority of the United States Constitution, which provides that

the State legislatures shall prescribe the method of electing presidential electors, conferred upon the qualified women of Illinois the right to vote for presidential electors. At the same time the right to vote for certain State and local officers not provided for in the State Constitution was also included in the act.

The course pursued in Illinois has proven popular in States whose Constitutions are difficult to amend. In 1917 six States followed the example of Illinois, namely: Indiana, North Dakota, Ohio, Rhode Island, Michigan, and Nebraska. Three of the six, North Dakota, Ohio, and Nebraska, included municipal as well as presidential suffrage. Arkansas, at the same time, extended to women the right to vote at primary elections and Texas adopted a similar law in the following year. Since these are one-party States, the primary is equivalent to an election, and so the political power granted by the two statutes is important. In Indiana, however, the law was declared to be unconstitutional by the State Supreme Court; while in Ohio the bill was submitted to the voters at the election in November, 1917, under the referendum, and was defeated by a large majority. The supporters of the measure signified their intention of appealing the matter to the United States Supreme Court on the ground that by the Federal Constitution, the State legislature and not the voters determines how and by whom presidential electors are to be chosen. According to a decision of the Ohio court Ohio cities under home rule charters may confer municipal suffrage upon women.

The most important advance, however, was the success of the equal suffrage amendment in New York. Defeated in 1915 by a majority of nearly 195,000 votes, the

amendment was re-submitted at the November election in 1917 and was adopted by a majority of over 100,000. This victory added forty-five presidential electors to the number already affected by women's votes and gives promise of the ultimate success of equal suffrage throughout the United States. South Dakota, Michigan, and Oklahoma followed New York's example in November, 1918.

Through these State laws women have secured an influential position in Federal as well as local affairs. In the fifteen equal suffrage States, together with the four which have presidential suffrage and the two in which women may vote at primary elections, women now have a voice in the election of two hundred and thirteen presidential electors, one hundred and thirty-two members of the House of Representatives, and thirty-four Senators. With the two leading parties of nearly equal strength the women voters can not safely be disregarded by party leaders, since about ten million women are now (1918) entitled to vote in the election of President and Vice President.<sup>356</sup>

#### AGITATION FOR FEDERAL AMENDMENT

Early demands for equal suffrage were generally directed toward action by individual States, for the doctrine of State sovereignty in such matters was unquestioned before the Civil War. The fourteenth amendment conferred citizenship upon the negroes; while the fifteenth amendment was adopted to make their political rights secure. At the time the women asked that "sex" be included in this amendment; but their wishes were disregarded, the leaders urging that it would be too much to ask the voters to grant suffrage to women and to negroes at the same time.

There was also an effort made to secure suffrage for women under the fourteenth amendment, on the ground that since it recognized the citizenship of both men and women it must have been the intention of the framers of the amendment that all citizens should vote. In order to test this view, Miss Susan B. Anthony, with several other women, registered and voted at an election for United States Representatives in New York in 1872. Miss Anthony was arrested and tried in the United States Circuit Court on the charge that she "did knowingly, wrongfully, and unlawfully vote for a Representative in the Congress of the United States . . . without a lawful right to vote in said election district (the said Susan B. Anthony being then and there a person of the female sex)". She was found guilty and fined one hundred dollars and costs.<sup>357</sup>

Even before the final adoption of the fifteenth amendment, a sixteenth amendment to confer suffrage upon women was introduced in Congress by Representative George W. Julian of Indiana. The resolution secured some support, but not sufficient to bring it to a vote. Since 1878 the Susan B. Anthony amendment, as this proposed modification of the Constitution has come to be called, has been presented again and again in Congress. In 1882 both houses provided for woman suffrage committees, but the House committee was discontinued in 1884 and was not reestablished until 1918. Equal suffrage matters in the House were usually referred to the judiciary committee, which seldom reported a bill on this subject and was generally opposed to any change. The Senate committee was much more active and its reports were more often favorable.<sup>358</sup>



The history of the struggle for the submission of a Federal amendment, however, is too long to be recited in detail in this connection. That supporters of equal suffrage were not entirely lacking is evident from the minority reports of committees to which the question was submitted. In 1884 a minority report written by Mr. Thomas B. Reed of Maine and signed by Mr. E. B. Taylor of Ohio, Mr. M. A. McCoid of Iowa, and Mr. T. M. Browne of Indiana was submitted to the House of Representatives. No one can accuse Thomas B. Reed, long the "Czar" of the House of Representatives, of being ultra-radical, sentimental, or visionary. This expression of approval by men from conservative States, although representing the minority of the committee, contains some pertinent comments on the merits of equal suffrage. Some of the striking sentences in this report read as follows:

No one who listens to the reasons given by the superior class for the continuance of any system of subjection can fail to be impressed with the noble disinterestedness of mankind. . . . Hence, when it is proposed to give to the women of this country an opportunity to present their case to the various State legislatures to demand of the people of the country equality of political rights, it is not surprising to find that the reasons on which the continuance of the inferiority of women is urged, are drawn almost entirely from a tender consideration for their own good. The anxiety felt lest they should thereby deteriorate, would be an honor to human nature were it not an historical fact that the same sweet solicitude has been put up as a barrier against every progress which women have made ever since civilization began. . . . Words change nothing. Prejudices are none the less prejudices because we vaguely call them "nature" and prate about what nature has forbidden when we only mean that the

thing we are opposing has not been hitherto done. "Nature" forbade a steamship to cross the Atlantic the very moment it was crossing, and yet it arrived just the same . . . .

We believe in the educating and improving effect of participation in government. We believe that every citizen in the United States is made more intelligent, more learned, and better educated by his participation in politics and political campaigns . . . . If, then, discussion of public affairs among men has elevated them in knowledge and intelligence, why will it not lead to the same results among women? It is not merely education that makes civilization, but diffusion of education . . . . Every improvement in the status of women in the matter of education has been an improvement to the whole race. . . .

It is sometimes asserted that women now have a great influence in politics through their husbands and brothers. That is undoubtedly true. But that is just the kind of influence which is not wholesome for the community, for it is influence unaccompanied by responsibility . . . .

We conclude, then, every reason which in this country bestows the ballot upon man is equally applicable to the proposition to bestow the ballot upon woman, that in our judgment there is no foundation for the fear that woman will thereby become unfitted for all the duties she has hitherto performed.<sup>359</sup>

The first vote upon the Susan B. Anthony amendment was taken in the Senate on January 25, 1887, and resulted in the defeat of the measure by a vote of sixteen to thirty-four — twenty-six Senators being absent. The Senate again defeated equal suffrage on March 19, 1914.<sup>360</sup> In 1915 the Mondell Resolution, as the House bill for equal suffrage by Federal amendment was called, was brought to a vote in the House of Representatives for the first time in the history of the United States, and though it was defeated by a vote of 174 to 204, the debate

in which equal suffrage was championed by men like Frank W. Mondell of Wyoming, Edward Keating of Colorado, E. A. Hayes of California, Nicholas J. Sinnott of Oregon, and Martin B. Madden of Illinois, has had some influence in later State campaigns. The first section of the proposed amendment read as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."<sup>361</sup>

The campaign of 1916 brought the suffrage question still more plainly before the people, though it was not a vital issue. Both Republicans and Democrats, as well as the minor parties, favored equal suffrage in some form in their platforms. The Republican candidate for President announced that he was in favor of Federal action; President Wilson went only so far as to favor State action.<sup>362</sup>

The entrance of the United States into the World War in 1917 brought new influences to bear upon the men and women of the country. The emphasis on democracy and the sacrifices and ability of the women of the country strongly reënforced their claim for a share in the government. This influence combined with the political power of the States in which women enjoy more or less enfranchisement secured a marked success in Congress in spite of the concentration of attention on the war. On January 10, 1918, the constitutional amendment providing that political rights should not be denied on account of sex was passed by the House of Representatives by a vote of 274 to 136—exactly the necessary majority. On the first of October, however, this amendment failed of adoption in the Senate by a vote of 53 to 31, in spite of

a strong plea for its passage on the part of President Wilson. Later this vote was reconsidered and the amendment still awaits the final action of the Senate.

NOTE ON EQUAL SUFFRAGE IN FOREIGN COUNTRIES

Equally noteworthy has been the progress of equal suffrage in foreign countries. In New Zealand women were enfranchised in 1893; the Australian provinces granted full suffrage to women between 1895 and 1908. Finland, a Russian province, followed in 1906, Norway in 1913, and Denmark in 1915; while Iceland, Manitoba, Saskatchewan, Alberta, and British Columbia granted full suffrage in 1916, and Ontario followed in 1917. English women have had local suffrage for many years, and in 1917 Parliament by vote of 387 to 57, granted full political rights to all women over thirty years of age who have certain other qualifications. Canada also enacted a suffrage law as a war measure, giving the parliamentary franchise to all properly qualified women in the Dominion who have close relatives serving in the Canadian army. Other countries have various forms of restricted suffrage for women. The Russian Revolution of 1917 brought theoretical equality in political affairs; but in the chaotic state of the government at the close of its first year, the right to vote does not appear to be effective in deciding vital public questions. The question of equal suffrage has become one of importance in all European countries because of the emphasis on democracy during the war.<sup>364</sup>

XIII  
EQUAL SUFFRAGE IN IOWA  
1838-1865

WHEN Iowa became a Territory in 1838 the struggle for "women's rights", as the movement was then called, was just beginning. Like all new movements it was unorganized and chaotic, its advocates being scarcely conscious of the end desired and lacking any agreement as to the means to be employed. Dress reform, the abolition of the institution of marriage, and similar radical measures were demanded by a few extremists; while the majority of the people looked with suspicion upon even the reasonable demands for reform.

Only a few women and fewer men were interested in bringing about more equitable provisions in the laws for women and removing unjust discriminations against them. In the frontier Territory, where the struggle with the wilderness was most acute, the interest was even less than in the more thickly settled communities where there was more leisure. The laws of the Territory permitted only free white male citizens to vote — a condition which was accepted at first without question. Indeed, it is probable that the language of the law was intended to disfranchise colored men, rather than women, who were not even expected to want to vote.<sup>365</sup>

It seems that the question of equal suffrage first arose in the Iowa legislature in the session of 1843-1844. On one occasion the House of Representatives passed a reso-

lution that "the ladies be permitted to take seats within the Bar of this House at pleasure, and that the Sergeant-at-Arms be instructed to furnish seats for their accommodation."<sup>366</sup> There was some discussion of the subject of equal suffrage at this time; but the legislators had no intention of changing the electoral qualifications, although it was said that "two or three went into regular spread-eaglim and aired their shallowness, their conceit and their devotion to women, as a parlor ornament."<sup>367</sup>

Even the request for political enfranchisement was at that time unusual — nor was it taken seriously when presented. As the question of negro slavery became more and more a threat of national division, people became less inclined to look with favor upon attempts to overthrow the established order. No two classes of society in America were more widely separated from each other than the negro slaves of the South and the white women of Iowa; yet somehow men seemed to feel that any change in the status of one group might result in the overthrow of the whole social order.

When the Constitution of 1844 was being drafted a disagreement arose over the question of negro suffrage. A committee appointed to investigate the subject reported adversely to the negroes, basing its conclusion on the principle that suffrage was not a natural right. The report reads in part as follows:

Females by the arbitrary rules of society are excluded and debarred from many things which males consider rights and high privileges — such as the elective franchise, holding office, &c. Now in these cases the female and infant are denied what we abstractedly term unalienable rights and they submit without complaint or murmur. No one thinks of sympathizing with them

in their deprivations.— The philanthropist has never had occasion to commiserate their fate;— still it is in those respects the same as the *citizen of color*. The negro is surely no better than our wives and children, and should not excite sympathy when they desire the political rights which they are deprived of.<sup>368</sup>

This report doubtless expressed the opinion of the members of the convention, since the Constitution which they framed gave only white male citizens the right to vote, although it declared that “all men are by nature free and independent, and have certain unalienable rights”.<sup>369</sup>

In connection with certain provisions of the *Code of 1851* there is an interesting illustration of the influence of custom in the interpretation of laws: it is provided in one section that if “any person” is challenged at an election, he must take an oath that he is a citizen of the United States; and in another section it is provided that “if any person utter or pass or tender in payment as true any false, altered, forged, or counterfeit note . . . he shall be punished by imprisonment”.<sup>370</sup> In the first case “any person” has been construed as referring only to men; in the second instance the same phrase used with the masculine gender was held to mean either a man or a woman.

Moreover, in those early days attempts of women to influence legislation even indirectly were frequently received with ridicule — as when a member of the House of Representatives moved to refer petitions from women and boys on the subject of prohibition to a committee on “women’s rights and children’s follies.”<sup>371</sup> Even among school teachers where the women nearly equalled the men in number there was little support of equal suffrage:

thus a resolution that "females should enjoy the right of suffrage in school matters" introduced in the State Teachers' Association in 1859 was tabled.<sup>372</sup>

In the constitutional convention of 1857 advocates of equal suffrage were met with the same argument which had been used in 1844, but the real question to be settled was that relating to the political status of free negroes. The report of the committee of the Convention of 1844 was urged against any change and it was finally decided to retain the words "white male" in the new Constitution. As a matter of fact there was no serious consideration of the proposition to confer the suffrage upon women, although some of the delegates doubtless would have voted for the reform.<sup>373</sup>

An effort to arouse interest in women's rights, however, was being made. In 1854 Frances Dana Gage of Ohio gave a series of lectures in the southeastern part of Iowa on temperance and the status of women; and in the following year Mrs. Amelia Bloomer of Council Bluffs began her work here as a lecturer and writer.<sup>374</sup> Before the work along this line had been well organized, there came the four years of war which were to decide the fate of the institution of slavery and the question of State sovereignty.



XIV  
EQUAL SUFFRAGE IN IOWA  
1865-1890

THE Civil War temporarily overshadowed the struggle for the equality of women in civil and political affairs; but in the end the war gave an added impetus to the movement by giving theoretical equality to the freed slaves. Thus, the debate over the status of the colored men involved many other questions and aroused a new interest in the duties and privileges of citizens and the qualifications for the franchise. Various restrictions were proposed by those who feared the extension of the electorate by the fifteenth amendment. The payment of taxes and the ability to read and write were among the tests proposed, and these qualifications were cited as arguments for the admission of women to the suffrage. Women who paid taxes protested against "taxation without representation", and many who had hitherto ignored the claims of women to a part in what claimed to be a democracy began to recognize the injustice of disfranchising educated women while permitting the most ignorant men to vote. At the same time those who opposed negro suffrage sometimes advocated woman suffrage merely to emphasize what they regarded as the absurdity of universal suffrage.

The most striking characteristic of the discussions of this period was the confusion of ideas, which may be illustrated by two quotations from an Iowa newspaper.

One concerned the relation of suffrage and the holding of property and read as follows:

Miss Dr. Harriet R. Hunt, of Boston has issued her twelfth annual protest against taxation without suffrage. The natural right of woman to be man is as evident as the right of a hen to crow; there is no use arguing the case.

The other item was a reply to a suggestion that only those who could read and write should be permitted to vote. The editor opposed the suggestion with the following comment:

Do the gentlemen propose to restrict taxation to those who can read?

No! they desire to create a governing, aristocratic class, who shall do the voting, and create taxes to be paid by emigrants who can't read english, or natives [who] are so unfortunate as to have no education. This attack upon universal suffrage is one of the means by which the "public debt is to be made effective."

At the same time there was a movement to enfranchise foreigners. The platform of the Democratic State Convention in 1867 contained a plank favoring an amendment to the Constitution giving foreign-born men the right to vote, providing they had declared their intention of becoming citizens and had resided one year in the State.<sup>375</sup>

Women, too, now began to realize more fully the significance of the ballot. In 1866 there was presented in the Iowa House of Representatives a petition from some women of Clinton County "praying for an amendment to the Constitution so that the women of Iowa may have the right of suffrage; claiming that they represent nearly one-half of the entire population of the State, and also

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one-half of its stability, intelligence, and virtue; that they are counted in the basis of representation, yet are governed and taxed without their consent, and punished for violation of law without judge or jury; and claiming further, that life, liberty, and property, are uncertain so long as the ballot, the only weapon of self-protection, is not in the hands of every citizen." A resolution was also introduced in the House providing that the "Committee on Constitutional Amendments be instructed to inquire into the expediency of striking out the word 'male' where it occurs in the Constitution in relation to franchise."<sup>376</sup>

During the discussion over the proposed extension of the franchise in the General Assembly in 1868 a more definite resolution was introduced by Representative Wilson of Davis County, which read as follows:

WHEREAS, We hold these truths to be self evident, that all men are created equal, and endowed by their Creator with certain inalienable rights, that to secure these rights governments are instituted deriving their just powers from the consent of the governed; and,

WHEREAS, We believe "men," in the memorable document from which we quote, refers to the whole human race, regardless of nationality, or sex; and

WHEREAS, We recognize the fact, that as a general principle, taxation and representation should be co-extensive; and

WHEREAS, It is a fact that women are compelled to give allegiance, and pay taxes, to a government, in the enactment of whose laws, they have been, and still are, denied a voice. Therefore,

*Be it Resolved as the sense of this House, That steps should be taken looking towards a change in the constitution of this State so as to allow women the right of franchise, for the proper*

use of which, her quick perception, strong intellect, and above all, her high sense of right and justice, have proven her so well qualified.

Although favorably reported by the committee on constitutional amendments, this resolution was not even voted upon. At the same time, the legislators voted for an amendment to strike out the word "white" from the Constitution — an amendment which was later adopted by a popular vote of 105,384 to 81,119.<sup>377</sup>

The adoption of this amendment emphasized the inequality in the position of women and aroused a number of women to begin a campaign of education among the people of the State. In 1868 Mrs. Martha H. Brinkerhoff made a lecture tour through the northern counties, organizing societies for the promotion of equal suffrage. Mrs. Annie C. Savery of Des Moines also gave a lecture at that place on equal suffrage, and in February, 1870, she gave a toast on the same subject at a Masonic banquet.<sup>378</sup>

The first resolution providing for the submission of a constitutional amendment conferring suffrage upon women in Iowa was introduced in the House of Representatives by Mr. John P. Irish in 1870; and the journals show that it was passed by both houses — the vote being fifty-four to thirty-five in the House of Representatives and thirty-two to eleven in the Senate. A motion to submit the question to a vote of the women before the amendment should be presented to the next General Assembly was voted down in the Senate. The Republican State Convention, which met at Des Moines in July, 1871, approved the submission of the amendment to the voters; but there is little evidence that the majority of the delegates were in favor of its adoption.<sup>379</sup>

According to constitutional requirements the resolution was presented to the General Assembly in 1872. The members at this time, however, were either new men or they had changed their minds in the interval for the resolution was defeated in the Senate by a vote of twenty-two to twenty-four, although it received a vote of fifty-five to thirty-nine in its favor in the House. Later the House recommitted the bill to provide for the popular vote on the amendment. The fact that at least five Senators who had voted for the measure in 1870 voted against it in 1872 suggests that perhaps the General Assembly did not really intend to make the resolution effective: the members may have been merely bidding for the good will of the women and the support of certain groups of men by political log-rolling when there was no immediate danger of the realization of equal suffrage.<sup>880</sup>

There was also a facetious proposal in the House in 1872 to strike out the word "male" from the law regulating work on roads. This too was rejected. A resolution to permit Mrs. J. G. Swisshelm to use the hall of the House for the purpose of delivering a lecture on woman suffrage was adopted. But the most interesting bill in the light of recent developments was the one introduced by Mr. John P. Irish, the sponsor of the suffrage resolution: it provided that women should be given the right to vote for presidential electors. This bill was never reported, and so there is no vote recorded thereon:<sup>881</sup> as usual, the General Assembly avoided decisive action.

In the meantime a curious though unimportant incident occurred at Clarinda, where the registry board in March, 1871, decided that women over twenty-one years of age were entitled to vote. It appears that the names

of the women considered eligible were, according to the informal system of registration then in use, placed on the roll. "Several gentlemen", reported a contemporary newspaper, "'got on their ear' about it and erased their wives' names. Several ladies got their precious backs up also, and erased their own names. None but the sons of Adam, however, offered to vote, and Clarinda is now as peaceable as Mary's little lamb."<sup>382</sup>

It is evident that at this time the demand for equal political rights was not widespread even among the women of Iowa.<sup>383</sup> A peculiar feature of the suffrage discussion at this time possibly accounts for the attitude of many of the opponents of suffrage. This was the association of political equality with "free love", which was largely the result of the teachings of some eastern extremists who believed that the total emancipation of women demanded the dissolution of permanent marriage ties. There is no evidence that any such views were held by the Iowa suffrage workers, but their advocacy in other places influenced many women to oppose equal suffrage because they feared that its adoption meant a social revolution. On the contrary, the majority of the Iowa suffrage leaders — like Mrs. Margaret W. Campbell and Mrs. Amelia Bloomer — were happily married and were being assisted in the work by their husbands. To many, however, there was no middle ground between free love and the complete subordination of women.

The trepidation with which the triumph of political equality was contemplated is evident from a letter signed "R. W. T." and published in the *Iowa State Weekly Register* in 1871. Asserting that equal suffrage meant the overthrow of the institution of marriage, the

writer expressed the hope that the women of Iowa would "remember that it involves every principle of morality and religion. Tis true, that anti-suffrage women in general, shun notoriety and are not willing to have their names go before the public, but a sacrifice must be made, if we would preserve inviolate the Republic, that our husbands, sons and brothers have so recently given their lives to serve. Allow the principles that suffragists are promulgating to take firm root in society, become the law of our land, and our choicest treasures, the dear little daughters of to-day, will before the close of the next decade become a prey to the licentious libertine."<sup>384</sup>

In another letter the same writer declared: "I would have every woman educated in the best schools, and in the highest manner possible, and wherever and whenever she is capable of performing men's labor equally as well as men, I would have her have the same pay; but there is something revolting and unwomanly in this uproar and clamor for the ballot, and demanding all of men's so called privileges — free love not excepted."<sup>385</sup>

That the majority of the American equal suffrage leaders repudiated any connection between the demand for the franchise and the extreme social views held by some of the reformers of the day is evidenced by the following resolution which was adopted at the meeting of the American Woman Suffrage Association in 1871:

That the claim of women to participate in making the laws she is required to obey, and to equality of rights in all directions, has nothing to do with special social theories, and that the recent attempts in this city and elsewhere to associate the Woman Suffrage cause with the doctrines of Free Love, and to hold it responsible for the crimes and follies of individuals, is an out-

rage upon common sense and decency, and a slander upon the virtue and intelligence of the women of America.<sup>386</sup>

It is, however, a fact that the suspicion that in some mysterious way equal suffrage meant the overthrow of the whole social order deterred many women from seeking the franchise. It was not, of course, clear how this moral catastrophe was to result from the simple act of dropping a ballot in a box; but the suggestion had been made and arguments pointing out the lack of any relationship between voting and immorality were ineffective until the common sense of the majority of women gradually recognized the absurdity of the objection. Indeed, it was said that in 1871 when Susan B. Anthony lectured on woman suffrage at Cedar Rapids and asked all the women who were favorable to signify their conviction by rising, only one "fair Rapidan arose".<sup>387</sup>

Inside the Iowa equal suffrage ranks there were leaders who proposed the repudiation of the doctrines of enthusiasts like Mrs. Victoria C. Woodhull. Others insisted that the charge of immorality should be merely disregarded:<sup>388</sup> they argued that it was unnecessary for the women of Iowa to publicly assert that they were not working for free love, since it was as impossible as an organized movement to legalize murder.

This dread of social anarchy was not, however, universal. The Iowa Press Convention at Marshalltown in 1871 permitted the women visitors to vote for the president, and the comment of one of the editors present was distinctly favorable. "We noticed several gentlemen", he declared, "rising from their seats to shake hands with their wives over their first vote. It was a picture for an Anna Dickinson or a Tilton, but not much of a



picture for Judge Clagett and his fellow-believer, Snyder, of the *Cedar Falls Gazette*. It will be nothing when they get used to it, as it seems foreordained they some day shall."<sup>389</sup>

Nor were all women deterred from participation in political interests by the prophecies of evil: five women appeared in the Republican County Convention in Montgomery County in 1871, where a Mrs. Flagg was a candidate for the nomination as county superintendent.<sup>390</sup>

Women also took some part in the presidential campaign of 1872. Indeed, a notice of a Republican rally at Des Moines informed the people that the meeting "will be addressed by Iowa's most gifted woman orator, Matilda Fletcher . . . . The ladies are especially invited to be present, and hear the good cause of Republicanism eloquently advocated by one of their own sex." A Democratic paper commented on the fact that the woman who was making speeches in favor of President Grant had formerly written "poetry" protesting against the corruption of his first administration. "A lady", the editor conceded, "is fortunately not required to be consistent."<sup>391</sup>

Furthermore, about this time there developed in the State of Iowa an organization which was to have great influence on the suffrage question—especially in the matter of training women in organized public work. This was the association first organized at Dubuque on April 17, 1869, under the name of the "Northern Woman Suffrage Association", of which Mrs. D. S. Wilson was the president. In June of the following year the first State convention met at Mount Pleasant where the "Iowa Woman Suffrage Association" was organized.

The first president of the new organization was General Henry O'Connor, then Attorney General of Iowa. Mrs. Amelia Bloomer, Miss Nettie Sanford, Mrs. F. W. Palmer, Joseph Dugdale, and John P. Irish were the first vice presidents. Mrs. Arabella Mansfield was chosen secretary, and Mrs. Annie C. Savery was named corresponding secretary.<sup>392</sup>

At the second convention held at Des Moines in October, 1871, a resolution was adopted claiming the right of suffrage for women, on the ground that women are persons and that under the fourteenth amendment to the United States Constitution, they had the right to vote. Among the speakers at this time were Mr. Ruttkay of Des Moines (a nephew of Louis Kossuth) and Mrs. Annie C. Savery, also of Des Moines. Mrs. Savery denied any connection between the propaganda for free love and the demand for equal suffrage; and she declared that if the ballot was the source of corruption, men also should be protected against the infection. Mrs. Bloomer was elected president for the following year.

The third convention, it appears, was not held until March, 1873. Of this meeting a prominent editor wrote these words: "While we have always been favorable to woman suffrage as a principle, we confess we think these associations and conventions and leagues formed for the furtherance of this principle alone, do more harm than good".<sup>393</sup>

Among the activities of the suffrage workers in these early years was the organization of local societies and the distribution of literature from a cottage on the State fair grounds. One of the first of the local societies was the Polk County Suffrage Society, organized on October

25, 1870. About the same time another society with fifty members was organized at Burlington. Societies were also formed at Algona, and at Independence, where Mrs. Narcissa T. Bemis, who was later president of the State association, was an active leader.<sup>394</sup>

Equal suffrage petitions continued to reach the legislature; and the suffrage amendment was almost without fail introduced in each General Assembly from 1870 to the present time (1918). The legislators seem to have pursued the policy of passing the resolution in one house and rejecting it in the other, or of passing it in both houses of one General Assembly and rejecting it at the next session. Many of the influential members were doubtless sincere in their support of the proposed change, but few of them were willing to make the adoption of the amendment an important issue in a political campaign.

Both the Senate and the House of Representatives passed the equal suffrage amendment in 1874. The vote was similar to that of 1870 — being fifty-six to thirty-eight in the House, and twenty-seven to twenty-one in the Senate. Furthermore, the Republican State Convention at its meeting in July, 1874, went on record as favorable to the submission of the equal suffrage amendment.<sup>395</sup>

Samuel J. Kirkwood, ex-Governor of the State, when questioned concerning his attitude toward equal suffrage during the campaign of 1875, replied that he "honestly hoped to see the day when in going to the polls we shall take our wives, daughters, and sisters with us", and he believed that "many of us would live to see such a day."<sup>396</sup> Governor Cyrus C. Carpenter also pledged his support, declaring that he had never been able to dis-

cover any argument to sustain his own right to vote that did not equally apply to women.

Indeed, sentiment ran more strongly in favor of woman suffrage in 1876 than for many years thereafter. The appeal of the Centennial celebration and the recognition of the injustice of enfranchising the ex-slaves while refusing equal privileges to white women made many friends for the suffrage cause, although the majority of both men and women remained hostile or indifferent. In the spring of 1876 an Iowa paper copied from an editorial which appeared in the *Minneapolis Tribune* the following statement concerning equal suffrage in school affairs in Minnesota: "Nearly all the ladies voting came in groups from four to six in number, the men stepping aside until their ballots were placed in the special deposit provided for them, and then the party would leave for home, leaving their brothers somewhat astounded that 'woman's suffrage' could be so courteously and effectively demonstrated." Upon which the Iowa editor commented: "Come to think of it, however, it is not marvellously strange that American men do not maltreat their wives and sisters and mothers when assembling to exercise their legal rights at the ballot-box. Civility to women is not an exceptional trait in this country."<sup>397</sup>

Governor Carpenter in his biennial message in January, 1876, favored the adoption of the suffrage amendment and suggested that the anniversary of the Declaration of Independence was a very appropriate time to celebrate "the doctrine that taxation and representation are of right inseparable"; but in spite of this appeal the Senate defeated the resolution to submit the amendment to the voters first by a vote of twenty-two to twenty-four

and upon reconsideration by a vote of twenty-two to twenty-three. The House of Representatives passed the resolution by a vote of fifty-four to forty, but the adverse action of the Senate killed the proposed amendment.<sup>398</sup>

Two years later the House of Representatives, after rejecting the amendment, reconsidered the resolution and adopted it by a vote of fifty-five to forty-two. Apparently the Senate did not vote upon the question, although a resolution was introduced and referred to the committee on constitutional amendments which recommended indefinite postponement. In 1880 the House again favored the amendment of the Constitution to give women the right to vote and to sit in the legislature; but to this resolution the Senate refused to agree. A resolution giving school suffrage to women was also favored by the House committee but not by the House, although the Senate approved this measure by a vote of twenty-seven to seventeen.<sup>399</sup>

Various petitions presented at this session of the General Assembly indicate that the suffrage advocates were planning attacks on different fronts. In addition to the numerous requests for constitutional suffrage, there was a petition for woman suffrage in educational matters and one for a law to exempt women property-owners from taxation until they were given the right to vote.<sup>400</sup>

Moreover, the equal suffrage movement was attracting attention outside the legislature and the suffrage organizations. The State Temperance Convention in 1877 and again in 1879 declared for equal suffrage as a means of enabling women to aid in the protection of the homes; and the Greenback State Convention in its meeting at Marshalltown in 1881 advocated "equal political

rights for all men and women'', and emphasized their conviction by nominating a woman for Superintendent of Public Instruction, although lawyers in the convention declared that she could not qualify if elected. The nominee, however, solved the difficulty by refusing to serve, declaring that she did not want to vote and that she favored the Republican party rather than the Greenback. A similar declaration of support was made by this party in 1883.<sup>401</sup>

The next few years saw the parties in Iowa engaged in a struggle over the question of prohibition. Equal suffrage was, indeed, much discussed, but chiefly as it was supposed to affect or be influenced by the liquor question. The Nineteenth General Assembly in 1882 passed the much introduced resolution for equal suffrage; but the House of the Twentieth General Assembly indefinitely postponed the measure, although the Senate at this time passed it by a vote of twenty-six to twenty-four. This, it may be noted, gave the women a victory in three of the five necessary votes on the subject — two in the House, two in the Senate, and the final vote by the men of the State. Possibly the success of the resolution might have been even greater had the Governor aided in any way; but Buren R. Sherman, in his message to the legislature in 1884, refused to approve equal suffrage, although he declared that he was in favor of submitting the amendment to the voters as a question of "important and general interest". Some of the newspapers of the State adopted the same policy, but it is possible that their object was rather to divert attention from the debate over prohibition than to assist the equal suffrage cause.<sup>402</sup>

The report of the Senate committee on constitutional amendments in 1884 contained the following endorsement of equal suffrage:

*First.* The principle is axiomatic, that the just powers of a free representative government are derived from the consent of the governed.

*Second.* That American civilization, law and conscience recognize woman as a subject of government, as a person and as a citizen in many respects equally, and in some respects more directly interested in the enactment and enforcement of law and in giving direction to the administration of government than man.

*Third.* That it is only fairness and justice to determine, as a general principle, that burdens and privileges, taxation and representation, if not altogether identical, should be equal and coextensive.

*Fourth.* That woman would doubtless vote quite as intelligently as man.

*Fifth.* That her participation in the elective franchise would tend to elevate rather than degrade politics.

*Sixth.* That there is no sufficient reason why her admission to share with man in the direction and control of governmental affairs may not and will not tend to advance the best interests of all classes in the commonwealth.

The majority of the committee therefore recommend the adoption of the joint resolution in order that the proposed amendment may be submitted to the people.<sup>403</sup>

In the meantime, the Iowa Woman Suffrage Association had been holding a State meeting each year, endeavoring to arouse interest in what the members felt was the next step towards democracy. They adopted as their slogan a variation of the Iowa State motto which read, "Our liberties we prize, our rights we will *secure*", and

made efforts to secure publicity for their side of the question through the newspapers. At first it was difficult to interest these organs of public opinion because the editors refused to consider the subject of equal suffrage seriously: they were inclined rather to ridicule the activities of the women. By 1884, however, one hundred and fifty newspapers had signified their willingness to print suffrage articles, although they generally made it clear that they disapproved of the proposed addition to the electorate.<sup>404</sup>

There is something pathetic in the efforts of the women who gathered year after year to consider the cause so important to them, handicapped as they were by the lack of votes which men have ever relied upon to further reform. Among the women who stood out because of their devotion to this work were Mrs. Margaret W. Campbell, Mrs. Martha C. Callanan, Miss Roma Woods, Mrs. Mary B. Welch, Mrs. B. F. Gue, and a long list of others who braved ridicule and discouragement without giving up the fight.<sup>405</sup>

Local suffrage clubs, or political equality clubs as they were coming to be called, were also organized in various towns and counties throughout the State; and in 1888 the Iowa Woman Suffrage Association adopted the plan of choosing a president for every congressional district and a superintendent for every county. The clubs thus organized were of various types, but most of them were open to all who cared to join or to attend. Their object was chiefly to get the women interested in government and to develop in them a sense of civic responsibility. By this time, in other words, the suffrage forces had practically abandoned the claim that political rights



were conferred on women by the fourteenth amendment to the Federal Constitution or by natural right: they were beginning to realize that participation in the government could be secured only when the demand for it was general and the women were qualified to vote. In Iowa there was happily no inferiority of women in general education or intelligence; it was necessary, however, that women should acquire familiarity with forms of organization, with the administration of the government, and with social conditions. Thus, the development of the general women's clubs, while wholly distinct from the suffrage movement as such, was really an important factor in creating a wider interest for women.<sup>406</sup>

Mrs. Carrie Lane Chapman (Catt), who was chosen State lecturer and organizer for the Suffrage Association in 1889, gave a strong impetus to the suffrage propaganda. She began her work on November 18, 1889, by organizing a Political Equality Club at Sioux City; and she continued in the work until 1890, when she removed from Iowa.<sup>407</sup>

The organization of local clubs with active members continued, although the number of such associations was never exactly known since many were not reported, while others broke up soon after their organization. Their chief work was the distribution of literature and the discussion of public questions. Nor were women the only speakers. President Aylesworth of Drake University gave the evening address at one of the meetings of the Marion County Political Equality Association, and General James B. Weaver spoke at one of the Polk County meetings. Similar addresses were given by other prominent men at various places, serving the double purpose

of educating the women in public affairs and awakening the men to the justice of the claims of the women.<sup>408</sup>

One of the men asked to give an address before the Woman Suffrage Association in 1889 was George A. Gates, then President of Grinnell College. He was compelled to refuse because of other duties, but he concluded his letter by saying: "The cause of extending suffrage to women is one in which I am considerably interested, never having been able to discover worthy reasons why suffrage should be denied them. Indeed, I have thought that after awhile we may come around and ask them to help us — a change from the present condition of things — rather than think of allowing them to do so."<sup>409</sup>

In 1879 the Iowa Woman Suffrage Association was affiliated with the American Woman Suffrage Association and sent delegates to its meeting. The Iowa representatives to the meeting at Washington in 1890, for example, were Mrs. Margaret W. Campbell of Des Moines, Mr. and Mrs. James Callanan of Des Moines, Mrs. Narcissa T. Bemis of Independence, and Mrs. Carrie Lane Chapman of Charles City. Mrs. Amelia Bloomer of Council Bluffs and Mrs. Margaret S. Cowgill of West Liberty were made honorary vice presidents of the national organization.<sup>410</sup> In November, 1891, the Iowa Woman Suffrage Association was incorporated. Six years later its name was changed to the Iowa Equal Suffrage Association, since it was felt that equal suffrage and not woman suffrage was the principle for which the Association was working.<sup>411</sup>

In the meantime, the old story of the constitutional amendment was being repeated in the legislature. Governor William Larrabee in his inaugural message on

January 14, 1886, declared that a "large number of our best people favor the extension of suffrage to women", but he advocated municipal or school suffrage as an experiment. Moreover, the chief executive emphasized property rights rather than the franchise in the following words:

It is clear to me that one thing is of vastly more importance to them [the women] than the ballot, and that is to acquire and to hold in their own name and right a larger share of property. This is essential to secure their real independence.<sup>412</sup>

In spite of the recommendations of the Governor and the flood of petitions sent to the legislature, equal suffrage was not favored by the Twenty-first General Assembly. The Senate passed the joint resolution looking towards a constitutional amendment by a vote of twenty-nine to seventeen; while the bill to grant municipal suffrage to women did not get beyond the judiciary committee to which it was referred. The House failed to act upon the constitutional amendment resolution, and a bill granting both municipal and school suffrage to women was never called up for a vote, although the committee which considered it recommended its passage.<sup>413</sup>

Interest in the cause, however, remained unabated on the part of the women who felt the injustice of disfranchisement. It was in 1886 that the publication of *The Woman's Standard*, a paper devoted to the suffrage cause and to political news of interest to suffrage workers, was begun by a group of Iowa women. The paper was partly supported by the Woman Suffrage Association. Two comments will illustrate the reaction of newspaper editors towards this enterprise. One paper contained the following endorsement:

It shows that the idea of woman suffrage is taking hold here, and that it is going to be fought out in Iowa. We never could understand why a woman didn't have just as much right as a man has to vote.

A different opinion was expressed by an editor who described the new organ in these words:

The Woman's STANDARD is a nicely printed eight-page journal, with able-bodied editorials, and communications by women who are tired making soap and rocking the cradle. From this on many a man will be going around with his suspenders fastened by a shingle nail. So far as we are concerned we are willing women should have the ballot if they can get it, and do away with side-saddles if they prefer to ride the other way.<sup>414</sup>

In general the Iowa newspapers opposed suffrage for women at this time, although some of them gave the matter considerable publicity. The *Cedar Rapids Republican* employed Mrs. L. M. Latham to conduct a woman suffrage department in its columns. When the *Standard* was first issued it was said that equal suffrage was favored by only one Democratic paper in the State — the *Keokuk Constitution*. Many Republican papers opposed the movement. One of the papers published in the German language denounced the entire movement because the editor believed only bad women would vote if they were given the ballot.<sup>415</sup>

Moreover, on the part of the equal suffrage leaders at this time there was an inclination to claim municipal suffrage without a specific act of the General Assembly, on the ground that women were entitled to the privilege by the Constitution. The Attorney General, however, decided that this interpretation of the Constitution was not sound.<sup>416</sup>

Some encouragement was given to the women by Governor William Larrabee, who in an address at Strawberry Point, on October 26, 1886, commented upon the large number of women present at a political speech and upon the lack of women tramps and the few women prisoners. Indeed, it appears that equal suffrage was publicly endorsed by the men who supported the fusion ticket of the Prohibition-Republican-Knights-of-Labor forces in the election of 1886. In commenting upon one of the candidates for Congress, a Democratic paper declared that "the democratic party stands as the opponent of female suffrage, and we think will maintain that stand. If Mr. O'Meara supports his platform, then he supports woman suffrage and has no claim on the vote of any democrat, or any one who opposes woman suffrage. This doctrine is distinctively republican."

In his first biennial message delivered in January, 1888, Governor Larrabee again mentioned equal suffrage, emphasizing especially municipal suffrage, which he declared was "favored by many of our best citizens." "It is claimed", continued the Governor, "by those who advocate this that it is not only right and just, but that it would so reënforce the better element of the population of our cities as to secure a more perfect enforcement of the criminal laws and greatly improve the government of our municipalities. The experiment might be a safe one, for if women should not avail themselves of the privilege when conferred, or if the results were unsatisfactory, the same power that bestowed the franchise could revoke it."<sup>417</sup> This statement could scarcely be considered a recommendation, although it was more favorable than omitting the subject altogether, as most

messages had done and the Governor was criticized for what he had said by the papers opposed to suffrage.

Expressing approval of municipal suffrage, the *Cedar Rapids Republican* declared that the Governor had not gone far enough. "Then," said the editor, "if they don't take enough interest in city government, city schools, city improvements, etc., to vote their preferences for men to execute the public will, why then — But we'll not attempt to cross a stream before we come to it."<sup>418</sup> Another paper declared that the "time is ripe for woman suffrage. Other States are adopting it. Let not Iowa remain behind."<sup>419</sup>

It is evident, however, that many of the legislators were not favorable to the extension of the suffrage, for the House bill granting municipal suffrage to women was defeated by a vote of fifty-three to forty-four. Various reasons were given in explanation of the negative votes: some declared that they believed the bill to be unconstitutional; others considered it inexpedient; while still others objected to permitting women in one place to vote while those in another could not. A joint resolution providing for a constitutional amendment, which was not open to at least two of these objections, was finally adopted by a vote of sixty-six to twenty-six after having been once rejected. The Senate apparently did not discuss the subject during this session, although a resolution was introduced and recommended for passage by the committee. It is said that on February 16, 1888, Mrs. Helen M. Gougar addressed the House committee on municipal suffrage — the first time a woman had spoken in the hall of the House of Representatives in the new capitol building.<sup>420</sup>

Among the opponents of equal suffrage during this session was J. S. Clarkson of the *Iowa State Register*, who based his opposition on the ground of policy. The Republicans having taken a progressive stand on the matter of prohibition now hesitated to take a step forward in suffrage reform, since in advocating prohibition they had already left a large number of their constituents far in the rear. Another advance, it was feared, would alienate still other members — a risk which the party could not afford to take. Of course there were no votes of women to lose; but the men who opposed equal suffrage were invaluable to the party's success and must not be offended. The position of the *Register* on equal suffrage did not, however, prevent the editor from urging the women of Iowa to aid in the election of Harrison and Morton.<sup>421</sup>

When the General Assembly convened in 1890 the equal suffrage forces concentrated their efforts on school and municipal suffrage, no determined attempt being made to secure action on the constitutional amendment. Governor Larrabee again advocated the limited form of enfranchisement, this time calling attention to the status of women in other States. His observations had apparently convinced him that equal suffrage, where it was in vogue, was at least reasonably successful for his message contained the following conservative endorsement:

The continued good results of its exercise in our sister state Kansas re-enforce the arguments in favor of trying the experiment in Iowa. In many of the states women vote for members of school-boards, and I see no reason why they should not do so here. It is worthy of note that the territory of Wyoming, after years of experience with woman suffrage at all elections, has

recently with great unanimity ingrafted the principle into the constitution with which it is now seeking to enter the Union.<sup>422</sup>

This argument did not prove sufficient to overcome the active opposition or inertia of the legislature, which found other questions more important. Two bills on the subject were introduced in both House and Senate: one, to give women school suffrage, and another granting them municipal suffrage. Neither proposition came to a vote in the Senate. The bill granting school suffrage was reported favorably by the House committee, but was defeated by a vote of eight to thirty-one; while the proposition for municipal suffrage was smothered in the committee to which it had been referred.<sup>423</sup> The constitutional amendment to give women the franchise did not come up at this session.

When the Iowa Suffrage Association met for its nineteenth annual convention in December, 1890, the members drew up resolutions ignoring the failure of equal suffrage in the preceding General Assembly and declaring that "we recognize in Wyoming the true and just form of State government, and congratulate the nation upon its admission with unrestricted suffrage". These resolutions also included a vote of thanks to certain Des Moines papers for their complete reports of the proceedings; and to one of them the committee extended "our further appreciation of the free advertising given our cause through its disparaging editorials."<sup>424</sup>



## XV

### EQUAL SUFFRAGE IN IOWA

1890-1918

IN some respects the outlook for equal suffrage in 1890 was more discouraging than it had been at any time since the Civil War. The interest aroused by the adoption of the thirteenth, fourteenth, and fifteenth amendments to the Federal Constitution had been counteracted by the early failure of negro suffrage: the country had begun to realize that to confer political rights upon unfit persons was a mistake — a state of mind which seemed to strengthen opposition to equal suffrage. On the other hand, the example of the western States was encouraging; but failures in government usually occupy a much greater share of attention than successes — especially when an excuse for inaction is desired.

Governor Boies, who did not mention equal suffrage in any of his messages, was considered an opponent of the measure, so that the indifference of the General Assembly during his administration was probably not displeasing to him. At the same time prejudice and indifference were being gradually overcome by the education of women in the methods of handling public affairs and by the slowly increasing emphasis on social rather than purely economic problems. In the summer of 1890 Mr. Terence V. Powderly, the leader of the Knights of Labor, advocated the admission of women to that order — which was really a political organization. He also championed

equal suffrage and equal pay for the same work, but his party was not sufficiently successful to challenge action on the part of the two leading parties.<sup>425</sup>

Several bills were introduced in the Twenty-fourth General Assembly concerning equal suffrage. One, presented by Senator Engle, proposed to give women the ballot by statutory enactment; another revived the proposition first made by Mr. Irish and provided for equal suffrage in voting for presidential electors. A Senate joint resolution proposed a constitutional amendment to strike out the word "male" in the sections relating to the franchise and membership in the General Assembly; but all these measures were smothered in committees in the Senate. Four bills on the same subject were introduced in the House: one to confer municipal suffrage upon women; another granting them school suffrage; a third, giving them general suffrage; and a fourth, to give women the right to vote for presidential electors. The municipal suffrage bill was lost by a vote of twenty-seven to fifty-four; the one for school suffrage failed by a vote of twenty-nine to fifty-three; while the others were indefinitely postponed.<sup>426</sup>

The friends of equal suffrage now began to realize that the attainment of their ideal of complete democracy meant the expenditure of a large amount of energy, money, and labor. When the Woman Suffrage Association met for its twenty-second annual convention at Webster City in November, 1893, the officers reported 1070 letters written, thirty-three new political equality clubs organized, and seventy-two lectures given. The Dunlap club at this time reported the largest membership — one hundred and forty-three. Gratification was

expressed over the planks in favor of equal suffrage in the Populist and Prohibition platforms.<sup>427</sup>

When the General Assembly met in 1894 an unusually active campaign was begun and petitions poured into the legislature — as many as fifty being presented in the Senate in a single day. A bill granting municipal and school suffrage to women was introduced in the House, and after much debate was passed in a greatly amended form and was then favorably considered by the Senate. As finally adopted this bill gave women the privilege of voting at municipal and school elections involving the issuing of bonds, borrowing money, or increasing the tax levy. In such matters the General Assembly decreed “the right of any citizen to vote shall not be denied or abridged on account of sex, and women may vote at such elections the same as men, under the same restrictions and qualifications.” Two other bills — one for school suffrage and one for municipal suffrage — were introduced in the Senate, but neither came to a vote. By a vote of twenty to twenty-six a joint resolution to amend the Constitution was defeated.<sup>428</sup>

The petition sent to the General Assembly by Mrs. Eva S. Gilchrist of Sioux City may be quoted as typical of the views of many other women :

*Gentlemen:*

The undersigned petitioner, born in the United States, and a citizen of Iowa since 1868, respectfully submits to your honorable body for consideration the following causes for grievance; referring you first, as a basis for these deductions to the grand principles upon which the foundation of our Republic and the constitution of Iowa rests, as enunciated in the Declaration of Independence which expressly states that “governments derive

their just powers from the consent of the governed; that taxation without representation is tyranny; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."

1st. Your petitioner meets all the requirements of the Constitution of Iowa, and not belonging to the classes set apart as disqualified voters; therefore, being denied the ballot, is unconstitutionally and unlawfully disfranchised—injuriously discriminated against—and is deprived of the Divine right of *self*-representation, true liberty, happiness, and the prerogatives of a responsible citizen, all in direct opposition to the principles upon which this government of the people, by the people, and for the people is founded.

2nd. Your petitioner is personally injured in feelings, influence, and power by being politically classed with the minor, insane, criminal, Jefferson Davis, idiot and slave, and is, therefore, compelled to stand before the government of both State and Nation, humiliated and reproached because created a woman.

3rd. Believing class-legislation unconstitutional, wrong in principle and injurious in practice, your petitioner protests against its further continuance,—as all men having the privilege of suffrage, no matter how densely ignorant, nor how corrupt in character, (only so they are out of prison,) nor how lately emigrated to my native land, are my political superiors,—they choose the rulers, and make laws to govern me without my consent, and, feeling more and more the ignominy of this unenviable position in our so-called Republic.

I do, therefore, humbly pray your honorable body to redress these grievous wrongs, and so far as you are legally qualified, to confer the elective franchise upon me, that I may represent myself equally with all those who now enjoy its advantages and blessings and respectfully request that favorable action may be taken upon my petition at this session of the legislature.<sup>429</sup>

In the debate on the suffrage bill which finally became a law in an amended form, various explanations were offered for negative votes, among which the two most frequently given were: that the bill was unconstitutional; and that the women did not want to vote. One Representative, however, was more original and handed in the following reason for his vote:

I have always been taught and Scripture says, God first made man and afterwards he took a rib out of the man's side, out of which he made a woman. Now it seems to me a disgrace and an injustice to let that *rib* control or dictate to men in any way, shape or form whatsoever in regard to the law making power in this State. Therefore, I vote no.

P. STILLMUNKES<sup>430</sup>

The fact that the men who dictated party policies were unwilling to admit women to the suffrage did not, however, prevent their asking for the aid of women in the campaign of the autumn of 1895. The *Iowa State Register* printed the following appeal to the women who favored Republican candidates in the State election:

The Republican women of the state should see to it that Republican men go to the polls to vote on Tuesday, November 5, even if the women have to run the threshing machines and do the husking for a few hours. Here is an opportunity for the women to vote. Every vote that they cause to be deposited in the ballot boxes on that day will be written to their credit. It is a lamentable fact that many men are so indifferent to the rights and duties of citizenship that they refuse to take a few minutes or a few hours to vote . . . . We appeal to the women to see to it that the men exercise their right and discharge their duty well on the fifth of November.<sup>431</sup>

This appeal to the women, together with some of the

statements made in connection therewith, apparently provoked some comment, for some three weeks later a defense of the paper's stand was published in the editorial columns. When compared with the above statement as to the indifference of the men voters, the explanation is rather interesting. The *Register*, it was asserted, "has frequently stated that it will be in favor of the extension of full suffrage to the women of the state when the majority of the women want to vote and will vote . . . . The Register is wholly indifferent on the matter of unsexed suffrage, except that the majority of the women shall decide the matter and then, if they declare in favor of voting, vote as generally as the men do."<sup>432</sup>

As the prohibition question had overshadowed equal suffrage during the years following 1882, so the excitement over the free silver issue and the debate in Iowa on the proposed changes in the State government absorbed the attention of Iowa politicians and legislators in 1896 — indeed, it seems that very little was required to divert the attention of most of them from the suffrage issue. Apparently no action was taken in the House during this session; while in the Senate a joint resolution in relation to equal suffrage was defeated by a vote of twenty-three to twenty-three.<sup>433</sup>

While the legislators were considering necessary changes in the State laws, another assembly met in Des Moines. This was the meeting of the National Woman Suffrage Association which convened in January, 1897, to discuss what its members considered the most necessary change in political administration. Among the speakers was Miss Susan B. Anthony, a woman of great ability and of better judgment than suffrage agitators

frequently employed. The meeting brought to the attention of the men and women of Iowa the number and the class of women interested in suffrage and the powerful organization they had effected to secure it. The *Iowa State Register* printed the following comment on the meeting:

The convention in this city this week will, no doubt, exert a large influence on this community and state. There is something infectious in a cause which has so many capable women pleading for it constantly. Other women are influenced by it and every time we lose a woman (we speak now from the anti-suffrage side) we are in danger of losing from one to half a dozen men . . . .

But the women who believe in suffrage are entitled to a full hearing . . . . The very chivalry which is the stronghold, or at least the boast of the anti-suffrage side, compels us all to yield them that. In the meanwhile we hope that the good women will not all desert us and go over to the side of "Our Susan," for we would be lonesome and powerless without them. For the success of the anti-suffrage cause reliance must be placed in women, not in men. The women are the final arbiters — the men are merely instruments in their hands. This is the sad truth.<sup>434</sup>

Miss Anthony even presided over a joint meeting of the two houses of the General Assembly in February, 1897, and a newspaper declared that she "did so well, that no man could have done better." Indeed, it was said that "the session Friday presided over by the inimitable Miss Susan B. Anthony will long be remembered by those who were present. And all the remembrances are pleasant ones. But, of course, this does not mean that we ought to extend the suffrage to women."<sup>435</sup>

The national suffrage leaders urged a concerted effort

on the part of the Iowa association to elect a legislature favorable to equal suffrage. "That campaign has already been begun", said an Iowa editor in May, 1897, "by the organization of suffrage societies and the holding of suffrage conventions in a number of the counties of the state, at which Miss Hay of New York, Rev. Anna Shaw of Philadelphia, our own Mrs. Carrie Lane-Chapman-Catt — the brightest woman enlisted in the woman suffrage cause — and other speakers of National reputation have been present to instruct and inspire the supporters of unsexed suffrage. The ladies opposed to the extension of suffrage to their sex are not so well organized, but they are beginning to make themselves manifest and will doubtless soon be as actively engaged in the contest as their opponents."<sup>436</sup>

The activity of the suffragists was chiefly directed towards the organization of local suffrage clubs: more than a hundred such groups were reported during the latter part of 1897. In 1899 there were said to be some two thousand women enrolled in these clubs.<sup>437</sup>

The work of these local organizations may be illustrated by the program of the Sioux City Political Equality Club which met each month in the city building. The subjects for discussion were: Iowa; parliamentary drill; the suffrage movement in Iowa; club methods in Iowa; history of legislative work in Iowa; history of bond suffrage in Iowa and what it has accomplished; and Iowa women office-holders. There was an open debate upon woman suffrage in which the club challenged the anti-suffragists. The meeting devoted to parliamentary drill took the form of scenes from the Republican State Convention with Mrs. Julia C. Hallam presiding.<sup>438</sup>



Thus the women obtained training in the practical problems of administration and political tactics. In these years of struggle they gained much in knowledge of affairs and in self-confidence, although the only concession of political power was the right to vote on the question of bonds and the right to hold certain offices.

The *Code of 1897* perpetuated the provisions concerning voting on bonds; but it expressly denied to women the right to vote for school officers, thus deciding against a claim made by some persons that the right to vote on bonds included the right to vote for school officers. The procedure in all elections at which women were allowed to vote was described in these words:

At all elections where women may vote, no registration of women shall be required; separate ballots shall be furnished for the question on which they are entitled to vote; a separate ballot box shall be provided in which all ballots cast by them shall be deposited, and a separate canvass thereof made by the judges of the election, and the returns thereof shall show such vote.<sup>439</sup>

An interesting incident was reported in 1897 concerning an election at McGregor in Clayton County on the question of issuing bonds for the erection of a plant to provide the city with water. This was, of course, one of the questions upon which women were entitled to vote; but the judges were not aware of the provisions of the law and at first refused to permit any woman to cast a ballot, so that only four women succeeded in voting. As a result of this irregularity the election was declared illegal. Again, in 1916 the election on the question of establishing a municipal court at Des Moines was contested because women were allowed to vote, but the Supreme Court upheld the legality of the vote.<sup>440</sup>

When the General Assembly met in 1898 two joint resolutions for a constitutional amendment were introduced in the House of Representatives. One failed to survive reference to the committee; while the other received only forty-nine affirmative votes, forty-eight Representatives voting against it and three failing to vote—thus giving less than the constitutional majority. Before the vote was taken the resolution was amended by inserting the provision that “women shall not be eligible to perform jury, police, military or road duty.”<sup>441</sup> A Senate resolution to strike out the word “male” from “section 1, article 3” was evidently intended to apply to Article II, but no action was taken upon it.

While the suffrage resolution was under consideration, the House and Senate committees on constitutional amendments granted a hearing to the equal suffragists and the anti-suffragists on February 3, 1898, at which a number of prominent women spoke on each side of the question. Among those in favor of the resolution were Mrs. Mary J. Coggeshall, president of the Des Moines Equal Suffrage Club, Mrs. Evelyn H. Belden of Sioux City, Mrs. Nellie Purcell of Des Moines, and Mrs. D. S. Wright of Cedar Falls. The anti-suffrage side was represented by a number of women, among whom were Miss Emilie Stowe, Mrs. Martin Flynn, and Mrs. H. A. Foster of Des Moines.

Exact reports of the speeches made before the committees are not available, but some of the points made were preserved by the newspapers. According to the report printed in the *Woman's Standard* Mrs. Coggeshall said:

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## 210 LEGAL AND POLITICAL STATUS OF WOMEN

Anti-suffragists tell us that it is easy to get by the votes of men every right to which we are entitled; but the facts are that every inch of advanced ground has been contested . . . . It is less than sixty-five years since a change in the laws favorable to women has taken place in any part of the United States, and none of these occurred until women began to ask for the ballot. The remnants of old-time restrictions remain. Were it not so, this company would not be here this afternoon.

Prejudices die hard. The creed of all nations has made the subordination of women the cornerstone of her religious character. The literature of all our past is saturated with this idea. If we accept the story of Genesis that a woman set up the world in the clothing business, furnishing the fig leaves for herself and husband, it is pathetic that the growth of 6,000 years does not yet in many states of this union allow the wife to own her fig leaves. You probably read in the daily papers a short time ago of the man in Connecticut who was so tired of the fancy gowns his wife persisted in wearing that he burned them. He was arrested for this destruction of property, but nothing could be done with him, because, as was plainly showed, a man has a right to do what he pleases with his own clothes.

The suffrage women are taunted with the assertion that they are seeking to don their husbands' clothes, while the facts are that women have always worn men's clothes — the suffragists are only trying to get women the right to wear their own.

Miss Emilie Stowe, the first "remonstrant", is reported to have begun by declaring that they would all rather be at home with their knitting, but feared the members of the legislature might be misled, and their minds biased toward equal suffrage, if they did not appear and protest against submitting the proposed amendment to the voters. She declared that the right to vote had become a "very shibboleth" with the suffra-

gists, but asserted that "from our point of view that word 'right' pales into insignificance — becomes nil, when pitted against the word 'expediency,' in connection with this question."

Mrs. H. A. Foster declared that the women had left their homes very reluctantly to speak in behalf of the contented wives and mothers who felt that their social duties in connection with home cares, taxed to their fullest capacity their mental, moral, and physical strength. She thought all arguments in favor of female suffrage "illogical and sophistical." In reference to the suffrage petitions that had gone to the legislature, Mrs. Foster made the following statement:

[They] bear the signatures of not only women of mature years, but of girls, of men, and of the dead. I mention the latter class because these petitions have been many years in preparation, and a large number of the original signers have passed away, leaving their signatures to be used in a manner which they, no doubt, by this time, sadly regret. As a matter of fact, these petitions indicate nothing but the craft and indomitable energy of the women engaged in securing them, and the good natured carelessness of the signers.

Mrs. Day began with the sarcastic reflection that those "least qualified to speak on legislative matters were the most prompt to offer suggestions to law makers." Instead of lessening the qualifications for the suffrage, she declared, such qualifications should be increased.

In her concluding remarks Mrs. Belden discussed the argument that voting would degrade women, saying:

I feel almost like speaking a word or two for man's suffrage, so much has been said against it this afternoon. I have never

known that a particular crowd of men was let loose on election day to corrupt, who are shut up the rest of the time. I have never believed a man was less a gentleman at the polls than at the opera and circus, nor that there was anything at the polls to endanger women which they do not meet elsewhere daily. I must resent the imputation regarding the petitions, for it hurt me deeply. I hate to think that I live in a state where the men are so careless about signing a petition on a great question, and [I] refuse to admit such is the case. That this movement is backed by poor house-keepers and discontented women, I also deny. We have in our ranks some of the best home makers and housekeepers in Iowa.<sup>442</sup>

In 1900 a similar resolution providing for equality of suffrage and office-holding failed to receive the necessary constitutional majority in the Senate; and in the House, the equal suffrage amendment was rejected by a vote of forty-three to fifty-six.<sup>443</sup> The amendment, indeed, fared a little better in the Twenty-ninth General Assembly in 1902, for it was then adopted in the Senate by a vote of twenty-eight to sixteen, although it was indefinitely postponed by the House of Representatives.<sup>444</sup> Indifference was largely responsible for the action of the legislators. The interest in public affairs which had been aroused by the Civil War had largely died down, while thousands of women now found an outlet for their energies in home work or in the clubs which were organized — at first, for individual culture rather than for the public welfare.

There is some evidence, however, that popular sentiment was slowly becoming more favorable to universal suffrage. The extension of the franchise to the women of the West was a strong argument in favor of the Iowa amendment. The emphasis on social problems which de-

veloped in the decade from 1890 to 1900 inevitably directed attention to the non-voting group which included approximately one-half the adult population. Newspapers began to take a more favorable attitude towards equality of men and women in political affairs. Most important of all, women began to exhibit more self-confidence. They seldom talked of "women's rights", but more often vindicated them in the courts. The men of the seventies sometimes, no doubt, voted for equal suffrage to please the women — especially when they did not believe it would be successful or permanent. Twenty years later, men were just beginning to realize that political equality was inevitable.

The General Assembly, however, was very conservative and continued to vote down the constitutional amendment until 1913. In 1904 the resolution was defeated in the House, while the Senate permitted it to be buried in the sifting committee after being unfavorably reported by the committee to which it had been referred. Moreover, the following explanation of an affirmative vote made by a member of the House of Representatives indicates that the legislators were becoming desirous of shifting the rejecting of equal suffrage to the voters of the State:

I have voted in the affirmative for the reason that this question has been presented to many past sessions of the General Assembly; and, in all probability will be urged on every future session until finally submitted to the electors for their determination.

Personally, I am opposed to the proposition, but do not wish to array myself against the submission to the people — having abiding faith in the defeat of the measure at the polls.<sup>445</sup>

This prophecy concerning the re-submission of the amendment was at fault only in inferring that the question would be settled by a defeat at the hands of the voters of the State. His advice, however, was not followed, and the General Assembly which met in 1906 defeated not only the joint resolution for the constitutional amendment, but also a bill granting presidential suffrage to women.<sup>446</sup>

In 1907 Senator Gale introduced a resolution for constitutional equal suffrage, but his measure was defeated in the Senate by a vote of twenty-one to twenty-six. A bill introduced in the House by Representative C. A. Meredith to give women school suffrage was passed by a vote of seventy-seven to nine, with twenty-two not voting; but the amendment resolution was not even considered by the Senate. Another bill aiming at presidential suffrage was referred to a committee where it was smothered.<sup>447</sup>

In the Thirty-third General Assembly a bill was introduced in the Senate providing "That the right of any citizen to vote at any election upon any question, except nomination and election of officers, or amendments to the constitution, shall not be denied or abridged on account of sex, and women may vote thereon the same as men". But this bill was deprived of any meaning it might otherwise have possessed by the striking out of its enacting clause. A resolution for the much discussed constitutional amendment was indefinitely postponed; and a similar resolution in the House failed to survive reference to the committee.<sup>448</sup>

The House of the Thirty-fourth General Assembly defeated the equal suffrage amendment by a close vote of

forty-eight to fifty-three; while a bill to permit women to vote on the question of establishing county hospitals did not secure definite action. A similar bill in the Senate was lost in the sifting committee; and a school suffrage bill was introduced and indefinitely postponed. It was during this session of the legislature that Miss Sylvia Pankhurst of England, then visiting in Des Moines, was invited to address a joint convention of the General Assembly and on February 1st, after a ballot on United States Senator, the members listened to "Lady Pankhurst".<sup>449</sup>

It was about this time that a group of men organized a State association for the "approval of the movement of women to attain the full suffrage in this state and country; and to aid them in their efforts toward that end by public appearance in behalf of the cause, and by circulation of literature and holding of meetings". This Men's League for Woman Suffrage held its first meeting in July, 1910, and included in its membership list at that time the names of Edwin A. Nye, John J. Hamilton, H. C. Evans, Henry Wallace, Edgar R. Harlan, A. L. Urick, R. D. Emory, Johnson Brigham, Leon Brown, E. T. Meredith, James Nugent, Harvey Ingham, and J. F. Riggs. These men were not demonstratively enthusiastic, but their organization showed that they were really in sympathy with the equal suffrage workers.<sup>450</sup>

When the Thirty-fifth General Assembly met in 1913 the advocates of equal suffrage, still hopeful, again presented their demands for the removal of political discrimination against women. A joint convention of the two houses listened to an argument by Mrs. Trout of the Illinois Suffrage Association. She discussed the various



objections to suffrage: women do not want to vote; a woman's place is in the home; women can not fight; the ballot would coarsen women; bad women only would vote; wives would be quarrelsome; and other fears of the anti-suffragists. The speech is too long to be repeated at length, but the following paragraph will illustrate its character:

Some people object to equal suffrage because they fear that if women were allowed to handle that dangerous piece of paper called a "ballot," they would grow coarse and masculine, because they would be associated in such a horrible and degrading way with men. Still women ride in our cars and in our autos every day, side by side with men, and seem to enjoy it. They work in our stores, teach in our schools, side by side with men. They go to church, side by side with men. They even live under the same roof with men, and yet this constant association has failed to make them either coarse or masculine. But, voting is, of course, different.<sup>451</sup>

It is unlikely that this speech had any large effect, but the general increase in opinion favorable to equal suffrage at this time made possible the adoption of a proposed constitutional amendment that "Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state six months next preceding the election, and of the county in which he or she claims his or her vote, sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law." This amendment was to take the place of Section 1, Article II, of the Constitution, which had so long disfranchised the women of the State: it was adopted by a vote of eighty-one to twenty-six in the House, and thirty-one to fifteen in the Senate.<sup>452</sup>

The *Supplement to the Code of Iowa, 1913*, provided that voters at school elections in corporations of over 5000 inhabitants must register; but this clause was not to be "construed to prohibit women from voting at all elections at which they are entitled to vote."<sup>453</sup>

Two years later it was provided that in voting at elections under the drainage act "the owner of each tract of land, if he or she is over twenty-one years of age, shall, without regard to sex . . . be entitled to at least one vote."<sup>454</sup>

According to the Constitution an amendment to the fundamental law must pass two successive General Assemblies before being submitted to the people, and so the equal suffrage amendment passed in 1913 came before the Thirty-sixth General Assembly. The anti-suffragists made a determined effort to defeat the resolution; but in this they failed. By a vote of thirty-eight to eleven in the Senate, and eighty-four to nineteen in the House, the suffrage amendment was approved by the legislature.<sup>455</sup>

At the committee hearing on the resolution in the House, advocates and opponents of the amendment appeared, and two of the speeches, both by anti-suffragists, were printed in the *Journal of the House* in accordance with a motion by Representative Klinker who was opposed to equal suffrage. These objectors to equal suffrage urged that women could best serve the State by staying at home; that men and women have different functions, and therefore women should be content to let men vote alone; that a mother's influence is greater than a voter's; that eighty per cent of the women over twenty-four years of age are married and have interests identical with their husbands; that if a wife voted against

her husband she would nullify his vote; that the franchise is not a right but a privilege delegated to whomsoever the government wishes; that the majority of the women do not want to vote anyway; that taxation without votes is not tyranny, since women are represented by the men; that women can carry on philanthropic work better without the aid of the ballot; and that women are no better off in suffrage States than they are in non-suffrage States. "The suffrage states", declared Miss Bronson, "are for the most part black." Furthermore, "Pasadena, saloonless throughout its history, voted in the saloons at the first election held after women voted."<sup>456</sup>

Mrs. Cullums of Des Moines based her objections to suffrage upon the difference between the sexes and the apparent intention of God that women were to dominate the world as mothers. The suffragists, she asserted, were intent upon breaking up the home. Some of her arguments were as follows:

If I were explaining a weed to a class of young girls and married women, I would say a weed and a suffragist look alike, and history has proven a suffragette is detrimental and injurious to home and home life, and that her silent aim seems to be an upheaval of the home and places sprags in the mental wheels of all young girls and married women by saying, any expectant mother should have pay for producing a child, and then I would dismiss the class and enter into a silent prayer, asking Lord God Almighty to give me strength to go on and teach purity and morality and motherhood in this sinful, twisted, carnal minded old world . . . .

The best rights that a woman can own she already has in her possession. The grandeur and power of her realm have never

yet been appreciated. She sits today on a throne so high that all the thrones of earth piled on top of each other, would not make for her a foot stool. Here is the platform on which she stands. Away down below it are the ballot box and the congressional assemblage and the legislative hall . . . . I am positive the minister who proclaims suffrage from his pulpit is of the world worldly. The ministers may preach prohibition and may see the saloons go, but more than that, back of all, is broken homes and immorality, which always drives imperfect humanity to drink.<sup>457</sup>

Arrangements were made by the General Assembly for the submission of the amendment to the voters of Iowa at the primary election on June 5, 1916, by a vote of sixty-seven to thirty-six in the House, and thirty to fourteen in the Senate. The resolution as passed by the legislature was signed on April 16, 1915, by Governor George W. Clarke.<sup>458</sup>

An exciting campaign followed. Miss Flora Dunlap<sup>459</sup> of Des Moines, the president of the Iowa Equal Suffrage Association, was in charge of the suffrage forces. She was assisted by a large corps of local speakers and by a number from outside the State, including Mrs. Carrie Chapman Catt and Mr. Owen R. Lovejoy. There was less speaking and fewer organizations on the anti-suffrage side. A majority of the opposition speakers were from outside the State; among them were Miss Minnie Bronson of New York and Mr. John P. Irish of California — the same Mr. Irish who in 1870 had introduced into the Iowa legislature the first resolution for the submission of an equal suffrage amendment to the Constitution.

Opposition and inertia proved more effective than suffrage propaganda and the measure was defeated at

the polls by a vote of 162,849 to 172,990.<sup>460</sup> Indifference and suspicion of any unusual step in public affairs were probably the chief reasons for this unfavorable vote; although the predominance of negative majorities on both this amendment and the later prohibitory amendment in counties with a large foreign element seems to afford some grounds for the opinion that the influence of the liquor interests and the opposition of foreign-born voters and voters of foreign parentage were partially responsible for the result.

The census report of 1915 shows that Clinton, Des Moines, Dubuque, and Scott counties contained at that time a total of 62,252 male citizens over twenty-one years of age. Of this number, 22,512 had been born in the United States of native American parents: the other 39,740 had either been born in foreign countries or, if born in this country, were of foreign parentage. The vote in these four counties stood 8061 for the suffrage amendment, and 19,031 against it; while the vote on the prohibitory amendment was 9635 for the measure, and 27,206 against it. Thus, in these counties the majority against suffrage was 10,970, and the majority against prohibition was 17,571. At the same time it appears that the total majority in the State as a whole was only 10,141 against suffrage, and 887 against prohibition.<sup>461</sup>

Immediately following the defeat of the suffrage amendment at the polls preparations were made to urge the General Assembly to provide for the submission of a new amendment. In spite of the popular defeat of the previous amendment, the members of the Thirty-seventh General Assembly were of the opinion that the decision at the polls did not close the case for equal suffrage, and

so they passed the new resolution by a vote of eighty-six to twenty in the House and thirty-five to thirteen in the Senate.

Attempts were made to include in this resolution a provision for submitting the question to the women of the State at the 1918 election, and also to add a provision that if defeated by a popular vote the amendment should not be re-submitted within ten years. The former motion was withdrawn, and the second was declared out of order on the ground that it attempted to bind future legislation. The amendment, however, was not published as provided by law previous to the election of 1918, and was thus rendered invalid.<sup>462</sup>

Thus, the year 1918 finds the women of Iowa possessed of the following political rights:

The right to vote at municipal and school elections on questions involving the issuing of bonds or the increase of the tax levy.

The right of women owning property within certain drainage districts to vote at the elections concerning the administration of such districts.

In Iowa women citizens still lack these essential political rights:

The right to vote for presidential electors and members of the United States Congress.

The right to vote for the Governor of the State and all other State officers.

The right to vote for county and township officers.

The right to vote for municipal officers.

The right to vote for school officers.

The right to vote on constitutional amendments.

## XVI

### WOMEN IN APPOINTIVE OFFICES IN IOWA

IN a democracy there is a close connection between voting and office-holding: indeed, with the exception of an additional age requirement for certain important offices, there has developed in America a general rule of law that anyone who is qualified to vote is qualified to hold office. Consequently women have been interested in office-holding as well as in the franchise. But in the early history of Iowa it was scarcely ever suggested that women should have the right to hold office. Indeed, it was considered "unladylike" for her to want to vote and quite beyond her proper sphere to hold a public office.

As a general rule American women, especially those of pioneer localities, did not aspire to office-holding until after the Civil War. At that time the increase in the number of women employed to take the places of the men who entered the army and the resulting confidence of women in their own abilities began to arouse an interest in public offices among the women of Iowa. Furthermore, during the war women began to take a large part in the philanthropic and educational work of the State and to occupy some of the clerical and administrative positions in this field of endeavor.

In accordance with a generally understood principle that elective offices can be held only by electors, unless otherwise specifically stated,<sup>463</sup> women in Iowa have been generally excluded from such positions — although the

only offices specifically denied to women by the Constitution are those of State Senator and Representative. On the other hand, no such restrictions have regulated appointive positions in the government, since the qualifications for such officers are fixed by the law creating the office or are left to the discretion of the appointing officer or board.

It appears that in the relief work made necessary by the Civil War so efficient did some of the women become in organizing the work of soliciting and distributing supplies that when the legislature, in September, 1862, made provision for the appointment of two or more sanitary agents by the Governor, it was specifically directed that one of these should be Mrs. Annie Wittenmyer.<sup>464</sup>

Miss Linda M. Ramsey of Tipton, employed as a clerk by Adjutant General Baker in 1864, is said to have been the first woman regularly employed and paid for clerical services by the State government of Iowa. Miss Augusta Matthews also served as military secretary to Governor Stone during the war. In 1870 Miss Mary E. Spencer of Clinton County was elected engrossing clerk of the House of Representatives,<sup>465</sup> and in 1872 each house appointed one woman among its officers. Succeeding General Assemblies have increased the number of women employed in clerical work during the session. Among the positions frequently held by women in the legislature are those of post mistress and her assistants, enrolling and engrossing clerks, and stenographers.

Other appointments soon followed. Mrs. Ada E. North was employed as a clerk in one of the State offices in 1871; and later she was appointed State Librarian by Governor Carpenter, serving from 1871 to 1878. She is



probably the first woman to be included among the State officers, not only in Iowa but in the United States. She was followed by a number of women in the same office: Mrs. S. B. Maxwell, 1878-1888; Mrs. Mary H. Miller, 1888-1894; Mrs. Laura C. Creighton, 1894-1896; and Mrs. Lena H. Cope, 1896-1898.<sup>466</sup>

Likewise women have frequently served as notaries public, court reporters, and as members of certain committees appointed to visit penal or charitable institutions where women or girls are detained. Many of the early appointments were for special purposes. Thus, Governor Carpenter in 1874 appointed Mrs. Deborah Cattell a commissioner to investigate charges of mistreatment of the inmates of the Reform School at Eldora.<sup>467</sup>

It is probable that the first woman notary public was Mrs. Nancy R. Allen, appointed by Governor Kirkwood in 1876. He also appointed Mrs. Anna C. Merrill as librarian and teacher at the Anamosa penitentiary, and Dr. Jennie McCowen and Dr. Sara A. Pangborn on the staff of physicians at the hospitals for the insane. In 1880 Governor Gear designated Dr. M. Abbie Cleaves as delegate from Iowa to the National Conference of Charities and Correction and to the National Association for the Protection of the Insane. It was in the same year that Mrs. Jane C. McKinney was chosen by the General Assembly as one of the trustees of the hospital for the insane at Independence.<sup>468</sup>

In the matter of public service, women have usually taken up work similar to that done by them in commercial and professional circles. Offices which are political stepping stones or rewards for political influence are for the most part still filled by men. A few women, however,

have been desirous of holding such positions. In 1897 the *Iowa State Register* published the statement that a woman from Muscatine had offered to accept a place as United States consul. Another Iowa woman was said to have requested that President Grant appoint her as consul at Havre. Her request was refused because the President feared that the precedent would be unsatisfactory to the French government — although, as the editor suggested, a nation which recognized a queen might recognize a woman consul.<sup>469</sup>

Recognition of women in legal and judicial circles has also been slow, largely because women themselves have not been attracted to such work. Women lawyers have not been numerous. In spite of this fact it appears that women have occupied some positions of importance even in this field. In 1900 Mrs. M. Lloyd Kennedy of Sioux City was appointed by the Iowa Supreme Court as one of the examining committee for the graduating law class at the State University — the first woman thus honored by the State.<sup>470</sup> In 1907 seven of the fifty-three court reporters in Iowa were women.<sup>471</sup>

Indeed, the laws of Iowa have sometimes made it a specific requirement that a woman should hold a certain position. In 1873 the Code provided that one of the three members of the committee appointed by the Governor to visit the hospitals for the insane must be a woman — a provision that was repeated in later Codes. In 1882 the General Assembly passed a law concerning the Board of Educational Examiners, providing that one of the two members to be appointed must be a woman.<sup>472</sup> The visiting committee for the hospitals for the insane was abolished in 1898, but the Board of Control was authorized to

appoint a woman residing within fifty miles of any hospital to visit it and report on conditions there. In 1915 the salary of such women visitors was fixed at four dollars a day and expenses.<sup>473</sup>

Probation officers, according to the law enacted in 1904, must be "persons" of good character; and in 1917 it was required that in counties having two deputy probation officers, one must be a woman. The law of 1894 creating boards of library trustees specified that members must be "male or female" bona fide citizens and residents over twenty-one years of age. The law adopted in 1913 providing for county hospitals permitted the county supervisors to appoint three women on the first hospital board, but it was not stated whether women were eligible as members of the succeeding elective boards.<sup>474</sup>

When provision was made for factory inspectors in 1913 the law stated that one of the three should be a woman; and it was made her duty to investigate the sanitary and moral conditions under which women and children were working — although neither the inspector nor the Commissioner of Labor have much authority to remedy conditions which are found to be undesirable. In accordance with this act Mrs. Ellen M. Rourke of Des Moines was appointed the woman factory inspector. She began her work on July 4, 1913, confining her investigations chiefly to certain selected industries such as laundries, telephone exchanges, stores, and hotels. As a result she has made two reports — one in 1914 and a second in 1916. It is probable that one result of these investigations will be an effort to bring Iowa in line with the more progressive States in the matter of industrial protection of women and children.<sup>475</sup>

The increasing interest of women in municipal administration was recognized in 1915 when the General Assembly enacted a law in reference to city playgrounds, providing that it shall be the duty of the city council where such playground was established to "appoint a woman, peculiarly fitted for such work, who shall be known as 'Playground Superintendent' " and who shall have charge of the children and playground. Her salary was to be fixed by the city council.<sup>476</sup> Two years later the Assembly repealed the provision requiring that a woman should be employed in this work by substituting the words "suitable person".<sup>477</sup>

The Thirty-seventh General Assembly also provided that one of the three commissioners to be appointed by the mayor to manage public comfort stations must be a woman. Likewise one of the nine members of the State advisory committee to be appointed by the State Board of Vocational Education must be a "woman experienced in woman's work".<sup>478</sup>

## XVII

### WOMEN IN ELECTIVE OFFICES IN IOWA

IN the case of appointive offices, as has been stated, women were seldom legally ineligible: public opinion and lack of political influence were the chief disqualifying factors. Elective offices, on the contrary, have been generally closed to women by the interpretation of the Constitution if not by a definite sex qualification. Besides providing that only male citizens may vote, the Iowa Constitution states that only men may be elected to the legislature. By the general rule that only electors may hold office, unless it is otherwise definitely stated in the law, women have been excluded from all elective offices in Iowa except in the few cases which will be discussed in the paragraphs that follow.<sup>479</sup>

The first woman to serve in an elective office in Iowa was Miss Julia C. Addington who was appointed county superintendent of Mitchell County in 1869 and elected to the same office at the October election of that year. Some question as to her eligibility seems to have arisen, which elicited an opinion from Attorney General Henry O'Connor. In this opinion the Attorney General declared that women were made ineligible to seats in the legislature by the Constitution and that "time honored usage" had interpreted the words "person" and "citizen" used in connection with office-holding to mean men only. "But", he observed, "a recent decision in the Court of Exchequer, England, holding that the generic term *man* in-

cluded women also, indicates our progress from a crude barbarism to a better civilization." Furthermore, he expressed the opinion that "Neither in that act [*Laws of Iowa*, 1862, Ch. 172], nor in any subsequent legislation on the subject, have I been able to find any express provision making *male* citizenship a test of eligibility for the place, or excluding women; and when I look over the duties to be performed by that officer . . . I deem it exceedingly fortunate for the cause of education in Iowa that there is no provision in the law preventing women from holding the office of County Superintendent of Common Schools.

"I know that the pronoun *he* is frequently used in different sections of the act, referring to the officer; but, as stated above, this privilege of the citizen cannot be taken away or denied by intendment or implication; and women are citizens as well and as much as men."<sup>80</sup>

There seems to have been no desire to disqualify Miss Addington, and as a result of this ruling by the Attorney General she continued to fill the position without further question. Moreover, in 1871 two other women were elected to the office of county superintendent; and by 1874 five women were acting in this capacity. Indeed, if the argument presented by Mr. O'Connor had been generally accepted, all offices in the State except membership in the General Assembly might have been opened to women.

The ruling of the Attorney General, however, was not permitted to go unchallenged, as is seen in the contest which developed after the election in 1875. Among the ten women chosen as county superintendents at that time was Miss Elizabeth S. Cook, who secured a majority of

the votes in Warren County. Her opponent, Mr. Howard A. Huff, contesting the election on the ground that a woman was ineligible, claimed the office for himself. Judge John Mitchell of the Circuit Court decided that Miss Cook could not qualify, since "a woman was ineligible to the office of superintendent"; but he also denied Mr. Huff's claim to the position since he had not received the majority of the votes which the law required.

The case was appealed by Miss Cook; but before the Supreme Court had passed upon it, the General Assembly, in March, 1876, enacted a law containing the provision that "no person shall be deemed ineligible by reason of sex, to any school office in the state of Iowa." Furthermore, the law was made retro-active and thus applied to all women county superintendents who had been elected before this time as well as to those chosen at future elections.<sup>481</sup>

Thus, when the case came before the Supreme Court in December, 1876, the status of the appellant had been changed and the question for decision was the validity of the law legalizing the election of women as school officers rather than the eligibility of a woman to the office of county superintendent. The Supreme Court did not pass upon the original question at issue, but merely affirmed the power of the legislature to admit women to any office from which the Constitution did not specifically exclude them and to legalize past elections.<sup>482</sup>

A few years later another attempt was made to exclude women from any elective office in Iowa: the contention was based upon the requirement that any person filing notice of his intention of contesting an election must be an "elector", according to the *Code of 1873*

which was then in force. Since no woman could be an "elector", it was claimed that a woman could not contest an election.<sup>483</sup> The test case arose in 1887 when Miss Ella S. Brown and Mr. J. R. McCollum were the candidates for county superintendent in Wright County. The board of canvassers having declared that Mr. McCollum was elected, Miss Brown contested the decision on the ground that the judges had thrown out a number of ballots which should have been counted for her. When the district court ruled in favor of the plaintiff, Mr. McCollum appealed the case to the Supreme Court.

The appellant claimed that he was declared elected by the judges of the election and that his opponent, being a woman, could not legally contest this decision. The Supreme Court affirmed the decision of the lower court and declared Miss Brown elected. In making this decision, the court held that all names clearly indicating the intention of the voter should be counted, even though the name was incorrectly written. The chief point in the ruling, however, was that the statute which made women eligible to school offices repealed by implication "so much of the statute before that time in force as required the technical statement that the contestant is an elector."<sup>484</sup>

Thus there developed in Iowa the anomaly of a class of citizens who were permitted to hold offices of some importance and yet were denied the right of voting for candidates for the same offices. Since 1869 women have served as county superintendents; and since 1876 other educational offices have been open to them.

The number of women occupying the office of county superintendent has increased rapidly, as the following statistics will show:<sup>485</sup>



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1870 — 1	1886 — 10	1902 — 17
1872 — 3	1888 — 8	1904 — 18
1874 — 5	1890 — 14	1907 — 29
1876 — 10	1892 — 12	1909 — 31
1878 — 7	1894 — 13	1911 — 46
1880 — 5	1896 — 15	1913 — 59
1882 — 9	1898 — 11	1915 — 59
1884 — 11	1900 — 14	1917 — 54

Concerning the work of women county superintendents a report made in 1898 by State Superintendent of Public Instruction Henry Sabin declared that "women have uniformly filled this office with a painstaking conscientious fidelity to duty which has rendered their work of great benefit to the schools under their charge."<sup>486</sup> Furthermore, an Iowa editor, whose paper opposed equal suffrage, commented upon the appearance of women in this field of endeavor by saying that it "will give to all of us something like a satisfactory foretaste of the good time coming when the people shall no longer hold that an ignorant man will make a better officer than an intelligent woman."<sup>487</sup>

A comment by the *Louisville Courier-Journal* on the situation in Iowa in 1876 suggests that conditions in some of the other States were not so favorable to women. "The women are county superintendents of schools in Iowa", wrote the editor, "and no person is deemed ineligible on account of sex to any school office in the State. Any woman there can practice law, sue and be sued, and do business in her own name, if she likes. The males will doubtless gradually drift back to agriculture, wander off to the Black Hills, or marry the lawyers and school superintendents."<sup>488</sup>

It is evident that the men of Iowa did not share in this pessimistic outlook, for in 1880 the General Assembly opened the office of county recorder also to women. The number of women who have served in this position has been only about one-half that of the women who have filled the office of county superintendent. This is partly due to the fact that there is no technical qualification required in the case of the recorder similar to the certificate requirement for the superintendent and partly to the more general familiarity of men with business and political affairs. At the same session of the legislature, a bill to permit women to qualify as county auditors was passed by the House of Representatives, but the Senate refused to give its approval.<sup>480</sup>

Two women, Mrs. C. I. Hill and Miss Addie Hayden, were chosen as county recorders at the election following the passage of the law of 1880. Ten years later six women were serving in this capacity. In 1902 there were five women county recorders in Iowa; in 1912 there were seventeen; and in 1917 the number was thirty-two. Thus, approximately one-third of the incumbents of this office at the present time are women.<sup>490</sup> It is interesting to observe in this connection that the *Code of 1897* contains the provision that in counties with a population of ten thousand or less "the same person may hold the office of county recorder and treasurer, and no person shall be disqualified on account of sex from holding the office of recorder."<sup>491</sup> It is difficult to see how any woman could be elected to this combination of offices so long as the law does not authorize their election as county treasurers.

Women have, moreover, been largely employed as deputies — especially in county offices. Mrs. J. H. Latty

is said to have acted as deputy sheriff in Des Moines County in 1870 and to have surprised the officials at Fort Madison by conveying a prisoner to the penitentiary.<sup>492</sup> In the case of offices to which women are eligible the position as deputy has frequently led to their subsequent election to the office. Even when a woman may not be elected to an office it appears that she may be appointed to fill a vacancy. Thus Miss Mae Freeman served as auditor of Johnson County from September 19, 1915, until January 1, 1917, completing the term of her brother who died in office.<sup>493</sup>

It appears that women became candidates for members of school boards at the time Attorney General O'Connor ruled that they could serve as county superintendents. In March, 1871, Mrs. Lydia Van Hyning was chosen as a member of the board of directors of Polk City. The following year the president of the board, deciding that a woman could not legally serve, appointed a man to fill the vacancy. Mrs. Van Hyning, however, secured a temporary injunction reinstating her, and at the following term of the district court was declared competent to act.<sup>494</sup>

Women were definitely made eligible to positions on school boards by the law of 1876, but they have not served in this capacity in large numbers. In 1877 Mrs. Mary Fisher was elected one of the three directors in Frederica, Bremer County. One of the men on the board immediately resigned, it is reported, declaring that "woman's place was *to hum*; she was out of her spear to school meetin's, holdin' office," and in similar work. Three years later Mrs. Mary A. Work was chosen as sub-director of one of the districts of Delaware Township in Polk

County and was made president of the board.<sup>495</sup> At Rockford in 1894 two women, who had secured the majority of the votes, were refused their offices because the officials did not know that the law permitted women to act; but the Attorney General decided in favor of the women<sup>496</sup> and the right has not since been questioned.

The *Code of 1897* contains the provision that a "school officer or member of the board may be of either sex, and must, at the time of election or appointment be a citizen and a resident of the corporation or subdistrict, and over twenty-one years of age, and, if a man, he must be a qualified voter of the corporation or subdistrict."<sup>497</sup>

It seems that a woman is also eligible to the position of State Superintendent of Public Instruction, but none have as yet been elected, although several have been nominated — generally by minor or third parties. In 1881 the Greenback party supported its endorsement of equal political rights by nominating Mrs. A. M. Swain of Fort Dodge as the party candidate for the office of State Superintendent of Public Instruction.<sup>498</sup> The party was unsuccessful and so the nomination was not followed by election. Two years later the same party nominated Miss Abbie O. Canfield of Des Moines County for the same office, but was unable to secure her election by the voters of the State. In 1889 the Prohibition party likewise nominated a woman, Mrs. C. A. Dunham of Burlington, for the position of Superintendent of Public Instruction.<sup>499</sup>

All offices, except those of State Senator and Representative, would be automatically opened to women if they were enfranchised; and even without enfranchisement the right to hold such offices may be conferred upon

women by statute. The section of the Constitution which disqualifies women from membership in the General Assembly is section four of article three which specifies that members of the House of Representatives must be "male citizens". Another section provides that Senators must have similar qualifications. In order to remove this disqualification, a constitutional amendment will, of course, be necessary. A number of attempts to bring about the change have already been made — especially during the decade between 1870 and 1880 when at each session of the General Assembly a proposed revision of the section in question was included in the suffrage resolution.<sup>500</sup> The fate of these proposed amendments has already been discussed in connection with equal suffrage.

Since 1880 it appears that the question of office-holding by women — particularly in reference to eligibility to membership in the General Assembly — has not been emphasized in Iowa. To be sure, the suffrage resolution of 1898 in the House included office-holding; and again in 1904 and 1906 an attempt was made to permit women to serve as legislators, but the measure failed along with the suffrage resolution.<sup>501</sup> Later amendments have, for the most part, not included an office-holding provision. Friends of equal suffrage have decided that it is best to concentrate efforts on the main issue. Furthermore, it has been observed that women in equal suffrage States are largely interested in school offices: comparatively few seek election to the legislature. As a result, many women who strongly desire a voice in the selection of legislators do not feel that the office is worth the effort necessary to secure it under present conditions.

It is probable that women are not legally disqualified from serving as presidential electors, or as members of either house of Congress: sex is not mentioned in the Constitution of the United States which prescribes the qualifications for these offices, and the States are not given authority to prescribe other qualifications. This question, however, has never been definitely settled, since there has been no case of a woman's election to Congress in a State where women are denied the franchise.

## XVIII

### RECAPITULATION OF POLITICAL STATUS

THE history of the struggle for the political equality of men and women discloses three stages: ridicule; argument; and adoption. When Iowa was admitted into the Union, the demand for "women's rights" was just becoming articulate and the suggestion that women should vote and hold office was frankly ridiculed. It must be noted, however, that from the beginning the division of opinion was not between men and women, but between the progressives and conservatives of both sexes. There were men who admitted the justice of the enfranchisement of women before the Civil War: there are still women in Iowa who oppose it.

When the fifteenth amendment to the Constitution of the United States was first discussed the friends of women suffrage urged that "sex" should be included, but the claims of the women were sacrificed to expediency. The adoption of that amendment, however, resulted in bringing the subject of women's political status clearly before the people, and attempts were soon made to secure suffrage for women by Commonwealth action. Wyoming Territory adopted equal suffrage in 1869, and at about the same time the question became prominent in Iowa. In Iowa the first suffrage amendment to the Constitution was proposed in the General Assembly in 1870 — the year that witnessed the beginning of the Iowa Woman Suffrage Association.

Since 1870 the proposal to enfranchise the women of Iowa has been the subject of much debate in the legislature. The resolution for a suffrage amendment has been passed ten times by the House of Representatives and nine times by the Senate, but only five times by both houses at the same session. It was not until 1913-1915 that the resolution passed both houses at two consecutive sessions of the General Assembly. Even then it was voted down at the polls in June, 1916. There is now the possibility that the suffrage may be conferred upon the women of this State through Federal amendment before the question is again submitted to the voters.

In 1894 Iowa women were granted the right to vote at school or municipal elections on the question of issuing bonds or raising taxes. Propositions for granting school suffrage, municipal suffrage, and presidential suffrage have also been made, but these suggestions have found little favor with either friends or opponents of equal suffrage — partly because half-way measures are unsatisfactory, and partly because it is doubtful whether most of the proposed changes would be constitutional.

In the matter of office-holding it appears that the General Assembly has the right to admit women to all offices except membership in the General Assembly. In 1869 for the first time in Iowa a woman was elected county superintendent. Under a ruling of the Attorney General, a number of women superintendents were elected and qualified between 1869 and 1876. In 1876, when this right was threatened by judicial ruling, the General Assembly passed a law specifically opening educational offices to women. In 1880 women were also declared eligible as to the office of county recorder. Probably



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women may legally serve as presidential electors, United States Representatives, and United States Senators, but there is little likelihood that women will be nominated for these offices until the franchise is secured. Practically all elective offices in Iowa are still closed to women, under the rule that unless it is otherwise specifically provided only electors may fill public offices.

## NOTES AND REFERENCES



## NOTES AND REFERENCES

### CHAPTER I

<sup>1</sup> Blackstone's *Commentaries on the Laws of England* (Chitty's Edition), Book I, pp. 345, 348, 349 [436].

The pages given in brackets are those of the original edition of Blackstone's *Commentaries*.

The man was required to be at least fourteen years of age. A marriage in which one or both of the parties was under age was voidable by either at the time the age prescribed was reached; but if not disaffirmed at that time, a valid marriage was complete without further ceremony.

<sup>2</sup> Blackstone's *Commentaries* (Chitty's Edition), Book I, pp. 355, 356 [441, 442].

<sup>3</sup> Tyler's *Commentaries on the Law of Infancy and Coverture*, p. 361.

<sup>4</sup> Blackstone's *Commentaries* (Chitty's Edition), Book I, p. 165 [219], Book II, p. 392 [477].

<sup>5</sup> Blackstone's *Commentaries* (Chitty's Edition), Book II, pp. 100, 101, 351 [126, 127, 128, 434].

<sup>6</sup> Blackstone's *Commentaries* (Chitty's Edition), Book II, pp. 351, 352, 353 [434, 435, 436].

<sup>7</sup> Schouler's *Law of the Domestic Relations*, pp. 102, 103, 113; Browne's *Elements of the Law of Domestic Relations*, pp. 29, 30, 31, 36.

<sup>8</sup> Schouler's *A Treatise on the Law of Husband and Wife*, pp. 457, 458; Browne's *Elements of the Law of Domestic Relations*, pp. 22, 23, 54; Tyler's *Commentaries on the Law of Infancy and Coverture*, pp. 314, 315, 317, 318, 319; Blackstone's *Commentaries* (Chitty's Edition), Book II, p. 416 [498].

<sup>9</sup> Blackstone's *Commentaries* (Chitty's Edition), Book II, pp. 234, 235, 236, 421 [291, 292, 293, 504].

<sup>10</sup> Blackstone's *Commentaries* (Chitty's Edition), Book III, p. 112 [139].  
Adultery, under early English law, was punishable as a crime only in Ecclesiastical courts.

<sup>11</sup> Schouler's *Law of the Domestic Relations*, pp. 95-98.

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<sup>12</sup> Tyler's *Commentaries on the Law of Infancy and Coverture*, pp. 340, 341, 347.

The obligation of the father to support the children was not so clearly defined by the Common Law as was the duty of the husband to maintain his wife in a suitable manner.

<sup>13</sup> Schouler's *Law of the Domestic Relations*, pp. 92-94.

<sup>14</sup> Blackstone's *Commentaries* (Chitty's Edition), Book IV, pp. 20, 21, 53, 54, 156, 157 [28, 29, 75, 77, 203, 204].

Chitty suggests that there was another reason for this attitude towards women who committed minor crimes in company with or under the direction of their husbands. A woman, he points out, could not receive the benefit of clergy; and consequently if the same charge was made against a man and his wife, the husband might escape with a slight punishment while the woman would be severely punished and perhaps put to death. To avoid this injustice, officers emphasized the wife's duty of obedience and disregarded her.

<sup>15</sup> Browne's *Elements of the Law of Domestic Relations*, p. 17.

Legally the wife could not be punished for beating her husband any more than he could for mistreating her, but this rule worked to the wife's disadvantage. At least one decision, however, denied the husband's right to chastise his wife.—The Queen v. Jackson [1891] Q. B. 671.

<sup>16</sup> Browne's *Elements of the Law of Domestic Relations*, p. 18; Blackstone's *Commentaries* (Chitty's Edition), Book I, p. 345.

<sup>17</sup> Blackstone's *Commentaries* (Chitty's Edition), Book IV, pp. 159, 160, 161, 162, 163 [208, 209, 210, 211, 212].

<sup>18</sup> Blackstone's *Commentaries* (Chitty's Edition), Book I, pp. 367-374, 377-379, 380 [447, 448, 449, 450, 451, 452, 453, 458, 459, 461].

Although the father was responsible for the support of his legitimate children, the mother of an illegitimate child could be required to provide for it if she was able to do so; or, if she made known the name of the father, he also could be held under bonds for its support. The child, however, could inherit from neither.

<sup>19</sup> Blackstone's *Commentaries* (Chitty's Edition), Book II, pp. 102, 103, 107 [129, 130, 131, 136].

Alienation of dower by the wife's joining in the transfer was also provided for by a statute of Henry VII.

The wife of a traitor was usually debarred from dower in forfeited lands, and an alien — except the Queen — could not enjoy this right unless

special permission from the King had been obtained. Apparently a woman's political status did not always follow the husband's.

<sup>20</sup> Blackstone's *Commentaries* (Chitty's Edition), Book I, pp. 353, 354, 355 [440, 441, 442], Book III, pp. 71, 72 [94].

<sup>21</sup> Blackstone's *Commentaries* (Chitty's Edition), Book I, p. 366 [444, 445].

## CHAPTER II

<sup>22</sup> Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 20.

<sup>23</sup> Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 26, 33, 34, 35.

<sup>24</sup> Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 37, 41, 42.

<sup>25</sup> McClain's *The Introduction of the Common Law into Iowa* in the *Iowa Historical Lectures*, 1892, pp. 80, 81; *Ordinance of 1787*, Art. 2, in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 52.

<sup>26</sup> McClain's *The Introduction of the Common Law into Iowa* in the *Iowa Historical Lectures*, 1892, pp. 86, 87.

Mr. Emlin McClain was Chancellor of the Law College of the State University of Iowa at the time this article was written. He was later one of the Justices of the Iowa Supreme Court.

<sup>27</sup> *Ordinance of 1787* in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 47, 48.

<sup>28</sup> *Laws of the Territory of Michigan*, Vol. III, p. 1191.

<sup>29</sup> *Laws of the Territory of Michigan*, Vol. III, pp. 1005, 1006.

<sup>30</sup> *Laws of the Territory of Michigan*, Vol. II, pp. 542, 543, 581, 582, 670, 671.

<sup>31</sup> *Laws of the Territory of Michigan*, Vol. II, p. 535.

<sup>32</sup> *Laws of the Territory of Michigan*, Vol. II, p. 17, Vol. III, p. 1409.

<sup>33</sup> *Laws of the Territory of Michigan*, Vol. II, p. 534.

<sup>34</sup> *Laws of the Territory of Michigan*, Vol. II, pp. 533, 534.

<sup>35</sup> Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 82; *Laws of the Territory of Wisconsin*, 1836-1838 (reprint), pp. 5-12.

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<sup>36</sup> *Laws of the Territory of Wisconsin*, 1836-1838, pp. 225, 230, 231. See also pp. 125, 196.

<sup>37</sup> *Laws of the Territory of Wisconsin*, 1836-1838, p. 179.

<sup>38</sup> *Laws of the Territory of Wisconsin*, 1836-1838, pp. 106, 223, 498, 506-508, 512-515.

<sup>39</sup> *Laws of Iowa*, 1840 (Extra Session), Ch. 29; *O'Ferrall v. Simplot*, 4 Iowa 381, at 402.

### CHAPTER III

<sup>40</sup> *Code of 1851*, Sec. 808.

<sup>41</sup> *Code of 1897*, Sec. 2224; *Anderson v. Blakesly*, 155 Iowa 430.

<sup>42</sup> *Washington County v. Polk County*, 137 Iowa 333; *Polk County v. Clarke County*, 171 Iowa 558.

<sup>43</sup> *Galvin v. Dailey*, 109 Iowa 332.

<sup>44</sup> *Laws of Iowa*, 1904, Ch. 127; *Supplement to the Code of Iowa, 1913*, Sec. 4471-b.

<sup>45</sup> A married woman's legal name is her own Christian name and her husband's surname.

<sup>46</sup> *Code of 1851*, Secs. 2391, 2392.

<sup>47</sup> *The State v. Guyer*, 6 Iowa 263.

<sup>48</sup> *Revision of 1860*, Secs. 3983, 3986; *Laws of Iowa*, 1860 (special), Ch. 90.

<sup>49</sup> *Karney v. Paisley*, 13 Iowa 89; *Russ et ux. v. The Steamboat War Eagle*, 14 Iowa 363; *Blake v. Graves et al*, 18 Iowa 312.

Justice Dillon dissented from this opinion.

<sup>50</sup> *Code of 1873*, Sec. 3641; *Laws of Iowa*, 1874, Ch. 33.

<sup>51</sup> *Code of 1897*, Sec. 4606; *Laws of Iowa*, 1898, Ch. 108; *Supplement to the Code of Iowa, 1913*, Sec. 4606.

<sup>52</sup> For some of the court decisions involving this matter see: *The State v. Bernard*, 45 Iowa 234; *Watson v. Riskamire et ux.*, 45 Iowa 231; *The State v. Rainsbarger*, 71 Iowa 746; *Cedar Rapids National Bank v. Lavery*, 110 Iowa 575; *Lucas v. McDonald & Son*, 126 Iowa 678.

<sup>53</sup> *The State v. McKay*, 122 Iowa 658.

<sup>54</sup> *Molyneux v. Wilcockson*, Judge, 157 Iowa 39.

<sup>55</sup> *Goodwin et al. v. Thompson*, 2 Greene 329, at 336.

This decision practically nullified the law of 1840 making fourteen years the minimum marriage age of a girl, although the penalties provided for any one solemnizing such marriages were not remitted.—*Laws of Iowa*, 1839–1840, Ch. 25.

<sup>56</sup> *Smith v. Silence*, 4 Iowa 321; *McKinney v. The Western Stage Company*, 4 Iowa 420, at 423.

<sup>57</sup> *Revision of 1860*, Secs. 2775, 2790, 2791, 2792, 4103; *Laws of Iowa*, 1870, Ch. 167, Secs. 11, 35.

<sup>58</sup> *Enders v. Beck*, 18 Iowa 86; *Musselman v. Galligher et ux.*, 32 Iowa 383; *Pancoast v. Burnell*, 32 Iowa 394.

<sup>59</sup> *Code of 1873*, Secs. 2205, 2211, 2562.

For the wife's responsibility for criminal acts committed in the presence of her husband see the chapter on criminal laws concerning women.

<sup>60</sup> *Mewhirter v. Hatten*, 42 Iowa 288; *Tuttle v. The Chicago, Rock Island, and Pacific Railway Company*, 42 Iowa 518; *Thomas v. The Town of Brooklyn*, 58 Iowa 438.

If the husband authorized the wife to sue for medical expenses, however, he could not afterwards put in his own claim for them:—*Neumeister v. The City of Dubuque*, 47 Iowa 465.

<sup>61</sup> *Peters v. Peters*, 42 Iowa 182; *Mowry v. Chaney*, 43 Iowa 609; *Stuttmuller, Administrator v. Cloughly*, 58 Iowa 738.

A newspaper in 1892 published the statement that an insurance company had refused an accident insurance policy to a woman on the ground that they insured "females against death only."—*The Woman's Standard*, Vol. VI, No. 9, May, 1892.

<sup>62</sup> *The Woman's Standard*, Vol. VIII, No. 6, February, 1894.

<sup>63</sup> *Hall v. The Town of Manson*, 90 Iowa 585, at 592, 593.

The quotations are found in *Van Doran v. Marden*, 48 Iowa 186, at 188; *Tuttle v. The Chicago, Rock Island, and Pacific Railway Co.*, 42 Iowa 518, at 521; *Fleming v. The Town of Shenandoah*, 67 Iowa 505, at 508.

<sup>64</sup> *Bailey v. City of Centerville*, 108 Iowa 20; *Kellar v. Lewis*, 116 Iowa 369.

See also *Burke v. Mally*, 141 Iowa 555.

<sup>65</sup> *Laws of Iowa*, 1911, Ch. 163; *Supplement to the Code of Iowa*, 1913, Sec. 3477-a.

<sup>66</sup> *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 3477-a.



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In this connection it is of interest to note the affirmation by the Supreme Court of a verdict of \$1210 damages rendered by a lower court for the death of a girl two years of age on the ground that school teachers in that vicinity were paid \$30 and \$35 per month.—Gregory, Administrator, v. Wabash Railroad Company, 126 Iowa 230.

<sup>67</sup> *Code of 1851*, Secs. 1696, 1697, 2586; *Revision of 1860*, Secs. 2790, 2791; *Code of 1873*, Secs. 2555, 2556; *Code of 1897*, Secs. 3470, 3471; Olson v. Rice, 140 Iowa 630.

<sup>68</sup> *Iowa State Register* (Des Moines), October 5, 1877; Geiger v. Payne, 102 Iowa 581.

Although Iowa law, like the Common Law, permits a suit against a woman for breach of promise, no case brought by a man against a woman for this cause has thus far reached the Iowa Supreme Court.—*Iowa Law Bulletin*, Vol. IV, p. 166.

<sup>69</sup> For a discussion of the Iowa laws concerning women as administrators and guardians see Ch. IX.

<sup>70</sup> *Code of 1873*, Sec. 1557; *Code of 1897*, Sec. 2418.

<sup>71</sup> Woody v. Coenan, 44 Iowa 19; Welch v. Jugenheimer, 56 Iowa 11.

<sup>72</sup> Calloway v. Laydon, 47 Iowa 456; Jackson v. Noble, 54 Iowa 641; Huff v. Aultman and Schuster, 69 Iowa 71; Thill v. Pohlman et al., 76 Iowa 638; Knott v. Peterson, etc., 125 Iowa 404.

<sup>73</sup> Woolheather v. Risley, 38 Iowa 486.

<sup>74</sup> Ward v. Thompson, 48 Iowa 588.

<sup>75</sup> Woolheather v. Risley, 38 Iowa 486; Kearney v. Fitzgerald, 43 Iowa 580; Ward v. Thompson, 48 Iowa 588.

<sup>76</sup> Price v. Price et al., 91 Iowa 693, at 696.

### CHAPTER IV

<sup>77</sup> *Laws of Iowa, 1838-1839*, pp. 180-183; Winship and Wallace's *The Louisiana Purchase as It Was and as It Is*, p. 104.

<sup>78</sup> For examples of such schools see: *Laws of Iowa, 1839-1840*, pp. 21, 62, 63; *Laws of Iowa, 1840-1841*, pp. 14, 15, 16, 17; Aurner's *History of Education in Iowa*, Vol. III, pp. 171, 176.

<sup>79</sup> *Catalogue of the State University of Iowa, 1856-1857*, p. 5; *Laws of Iowa, 1846-1847*, pp. 188, 189; Aurner's *History of Education in Iowa*, Vol. IV, pp. 20, 21, 28.

<sup>80</sup> *Laws of Iowa, 1864*, Ch. 59. See also *Laws of Iowa, 1870*, Ch. 87.

<sup>81</sup> *House Journal*, 1868, p. 39; Aurner's *History of Education in Iowa*, Vol. IV, p. 218.

<sup>82</sup> Aurner's *History of Education in Iowa*, Vol. II, p. 137; *Abstract of Thirteenth Census, with Supplement for Iowa*, p. 248.

<sup>83</sup> Aurner's *History of Education in Iowa*, Vol. I, pp. 76, 290.

<sup>84</sup> *Thirteenth Census of the United States*, 1910, Vol. IV, p. 122.

<sup>85</sup> Aurner's *History of Education in Iowa*, Vol. I, pp. 27, 28, 103, 306; *The Iowa City Republican*, August 3, 1864.

<sup>86</sup> Aurner's *History of Education in Iowa*, Vol. I, p. 305; *House Journal*, 1868, p. 123.

<sup>87</sup> Aurner's *History of Education in Iowa*, Vol. II, p. 100; *The Woman's Standard*, Vol. II, No. 5, January, 1888.

<sup>88</sup> Aurner's *History of Education in Iowa*, Vol. II, pp. 100, 234, 397, 398.

<sup>89</sup> *The Annals of Iowa* (Howe's), Vol. III, p. 103.

#### CHAPTER V

<sup>90</sup> *Code of 1851*, Secs. 1026, 1027, 1028.

<sup>91</sup> *Annual Announcement of the Medical Department of the Iowa State University*, 1870-1871, p. 14.

<sup>92</sup> *Catalogue of the Iowa State University*, 1870-1871, p. 11; Fairchild's *Medicine in Iowa*, p. 57; *Annual Announcement of the Medical Department of the Iowa State University*, 1872-1873, p. 4.

<sup>93</sup> Fairchild's *Medicine in Iowa*, p. 80.

<sup>94</sup> *Medical and Surgical Directory of Iowa*, 1878-1879, pp. 80, 84, 87, 91, 92, 98, 100, 102, 105, 112, 114, 116, 121.

<sup>95</sup> *Laws of Iowa*, 1886, Ch. 104; *Laws of Iowa*, 1880, Ch. 75.

<sup>96</sup> *Ninth Census of the United States*, 1870, Vol. I, p. 733; *Tenth Census of the United States*, 1880, Vol. I, p. 822; *Compendium of the Eleventh Census of the United States*, 1890, Part III, p. 408; *Twelfth Census of the United States*, 1900, Vol. II, p. 520; *Thirteenth Census of the United States*, 1910, Vol. IV, p. 461.

<sup>97</sup> *Laws of Iowa*, 1907, Ch. 139; *Twelfth Census of the United States*, 1900, Vol. II, p. 520; *Thirteenth Census of the United States*, 1910, Vol. IV, p. 461.

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<sup>98</sup> Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, pp. 401, 402, 631.

<sup>99</sup> *Laws of Iowa*, 1917, Ch. 309.

<sup>100</sup> *Code of 1851*, Sec. 1610.

<sup>101</sup> *Laws of Iowa*, 1870, Ch. 21; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, p. 626; *Iowa Historical Record*, Vol. VII, p. 63.

Arabella Mansfield was said to be the first woman lawyer in the United States. One writer states that she was admitted to the bar in 1864.—Hecker's *A Short History of Women's Rights*, p. 171.

Mrs. Emma H. Haddock was the first woman admitted to practice in the Federal courts of Iowa.—*Iowa Historical Record*, Vol. X, p. 96.

<sup>102</sup> *Iowa State University Alumni Register*, 1847-1911, pp. 99-164.

Women were first allowed to plead in the United States Supreme Court in 1879. In 1917 Judge H. K. Evans and his wife of Corydon, Iowa, were admitted to practice before the United States Supreme Court—the first time that a husband and wife have been granted that privilege. Mrs. Evans is a law partner of her husband.—*The Burlington Hawk-Eye*, copied in the *Chicago Herald*, January 15, 1918; Hecker's *A Short History of Women's Rights*, p. 171.

<sup>103</sup> *Ninth Census of the United States*, 1870, Vol. I, p. 733; *Tenth Census of the United States*, 1880, Vol. I, p. 822; *Compendium of the Eleventh Census of the United States*, 1890, Part III, p. 408; *Twelfth Census of the United States*, 1900, Vol. II, p. 520; *Thirteenth Census of the United States*, Vol. IV, p. 122.

<sup>104</sup> *Ninth Census of the United States*, 1870, Vol. I, p. 733; *Tenth Census of the United States*, 1880, Vol. I, p. 822; *Compendium of the Eleventh Census of the United States*, 1890, Part III, pp. 408-412; *Twelfth Census of the United States*, 1900, Vol. II, p. 520; *Thirteenth Census of the United States*, Vol. IV, pp. 120, 122, 460, 461.

### CHAPTER VI

<sup>105</sup> *Laws of Iowa*, 1838-1839, p. 146.

This law applied only to men over fourteen years of age.

<sup>106</sup> *Laws of Iowa*, 1886, Ch. 114; 1896, Ch. 70; *House Journal*, 1915, see index; *House Bills*, 1915, No. 483.

<sup>107</sup> *Laws of Iowa*, 1894, Ch. 100.

<sup>108</sup> *Code of 1851*, Secs. 2582, 2583, 2584, 2585, 2710, 2713.

The *Revision of 1860* practically repeated these provisions.

In 1882, the Iowa Supreme Court decided that in case of rape accomplished by the use of stupefying drugs, it was immaterial whether or not the woman knew of the defendant's bad reputation.—*The State v. Porter*, 57 Iowa 691.

<sup>109</sup> *Laws of Iowa*, 1884, Ch. 142.

<sup>110</sup> *Code of 1851*, Sec. 2586.

<sup>111</sup> *The State v. Tarr*, 28 Iowa 397.

<sup>112</sup> *The State v. Shean*, 32 Iowa 88; *The State v. Reilly*, 104 Iowa 13. Seduction could also be made the basis of a civil action for damages.

<sup>113</sup> *Code of 1897*, Sec. 4764; *Morris v. Stout*, 110 Iowa 659.

<sup>114</sup> *Laws of Iowa*, 1907, Ch. 170.

For further mention of this law concerning desertion see Chapter IX.

<sup>115</sup> *Code of 1851*, Sec. 2605; *Revision of 1860*, Sec. 4229; *Code of 1897*, Sec. 4783; *The State v. Kelly*, 74 Iowa 589; *The State v. Fertig*, 98 Iowa 139; *The State v. Gill*, 150 Iowa 210.

The rule which held the wife equally responsible for such crimes as the keeping of a disorderly house is an old principle of law. In such cases the presumption of the husband's influence does not hold since a woman might reasonably commit such a crime without coercion.

<sup>116</sup> *Briggs's Social Legislation in Iowa*, p. 30.

<sup>117</sup> *Laws of Iowa*, 1894, Ch. 15; *Laws of Iowa*, 1898, Ch. 18.

<sup>118</sup> *House Journal*, 1882, pp. 610, 611. For examples of petitions in 1872 see *Senate Journal*, 1872, pp. 140, 155, 180, 209, 241, 288.

<sup>119</sup> For examples of such petitions see *Senate Journal*, 1884, pp. 81, 128, 136, 178, 202, 272, 299, 319, 322; *Senate Journal*, 1907, pp. 102, 385, 386, 387, 388, 407, 501, 646.

<sup>120</sup> *Laws of Iowa*, 1890, Ch. 69; *Code of 1897*, Sec. 5674; *Laws of Iowa*, 1900, Ch. 102; *Laws of Iowa*, 1907, Ch. 193; *Supplement to the Code of Iowa*, 1907, Sec. 2713-e, 2713-f; *Laws of Iowa*, 1904, Ch. 80.

For later provisions concerning female inebriates see *Supplement to the Code of Iowa*, 1913, Secs. 2310-a19a, 2310-a22.

<sup>121</sup> *Laws of Iowa*, 1913, Ch. 17; *Supplemental Supplement to the Code of Iowa*, 1915, Secs. 2713-n1 to 2713-n19.

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<sup>122</sup> *Laws of Iowa*, 1917, Ch. 427; *Senate Journal*, 1917, pp. 684, 732, 808, 834, 908, 942, 1054, 1106, 1542.

<sup>123</sup> *Laws of Iowa*, 1868, Ch. 59; *Report of the Iowa Reform School*, pp. 4, 21, in the *Iowa Legislative Documents*, 1872, Vol. II.

<sup>124</sup> *Laws of Iowa* (General), 1872, Ch. 77; *Laws of Iowa*, 1876, Ch. 38; *Laws of Iowa*, 1880, Ch. 171; Aurner's *History of Education in Iowa*, Vol. V, Part IV.

<sup>125</sup> *Code of 1897*, Secs. 2702-2713; *Laws of Iowa*, 1900, Chs. 100, 101; *Supplement to the Code of Iowa, 1913*, Secs. 2701-a-2713-4a.

<sup>126</sup> *The State v. Rayburn*, 170 Iowa 514.

This was an interpretation of Sec. 4943 of the *Code of 1897*.

<sup>127</sup> *Laws of Iowa*, 1890, Ch. 43.

### CHAPTER VII

<sup>128</sup> See Chapter I.

<sup>129</sup> *Laws of Iowa*, 1839-1840, Ch. 25.

<sup>130</sup> *Code of 1851*, Secs. 1464, 1466, 1487.

<sup>131</sup> *Revision of 1860*, Secs. 2516, 2539; *Code of 1873*, Secs. 2186, 2191, 2237; *Code of 1897*, Secs. 3140, 3141, 3188.

<sup>132</sup> For a complete discussion of the causes for divorce in Iowa, see Patton's *History of Divorce Legislation in Iowa* (a manuscript thesis in the possession of the library of the State University of Iowa).

<sup>133</sup> *Iowa Capitol Reporter* (Iowa City), September 9, 1843.

<sup>134</sup> *Code of 1851*, Secs. 1482, 1483; *Laws of Iowa*, 1854-1855, Ch. 76; *Laws of Iowa*, 1858, Ch. 64; *Revision of 1860*, Secs. 2534, 2535; *Code of 1873*, Secs. 2223, 2224; *Code of 1897*, Secs. 3174, 3175.

<sup>135</sup> *Code of 1873*, Sec. 2224.

<sup>136</sup> *Knight v. Knight*, 31 Iowa 451, at 456.

<sup>137</sup> *Doolittle v. Doolittle*, 78 Iowa 691.

<sup>138</sup> *Turner v. Turner*, 122 Iowa 113; *Pfannebecker v. Pfannebecker*, 133 Iowa 425; *May v. May*, 108 Iowa 1.

<sup>139</sup> *Laws of Iowa*, 1838-1839, p. 179.

<sup>140</sup> *Laws of Iowa*, 1839-1840, Ch. 81.

<sup>141</sup> *Code of 1851*, Sec. 1485.

<sup>142</sup> *Jolly v. Jolly*, 1 Iowa 9, at 13.

Another case which showed an advance over the Common Law was decided in 1859, when the judges ruled that a man who brought an immoral woman into his home might be compelled to pay for his wife's support elsewhere, even though she was insane part of the time and unconscious of the insult.—*Descelles v. Kadmus*, 8 Iowa 51.

<sup>143</sup> *Fivecoat v. Fivecoat*, 32 Iowa 198, at 199.

<sup>144</sup> *Code of 1873*, Sec. 2226.

<sup>145</sup> *Barnes v. Barnes*, 59 Iowa 456.

<sup>146</sup> *Klaes v. Klaes*, 103 Iowa 689.

<sup>147</sup> *Dayton v. Drake*, 64 Iowa 714; *Picket v. Garrison*, 76 Iowa 347.

<sup>148</sup> *Aitchison v. Aitchison*, 99 Iowa 93; *Vey v. Vey*, 150 Iowa 166.

<sup>149</sup> *Rouse v. Rouse*, 47 Iowa 422; *Wilson v. Wilson*, 40 Iowa 230.

<sup>150</sup> *Preston v. Johnson*, 65 Iowa 285; *Doolittle v. Doolittle*, 78 Iowa 691; *Sherwin & Schermerhorn v. Maben*, 78 Iowa 467; *Stockman & Hamilton et al. v. Whitmore*, 140 Iowa 378; *Gordon and Belsheim v. Brackey*, 143 Iowa 102; *Read & Read v. Dickinson*, 151 Iowa 369; *Wick v. Beck*, 171 Iowa 115.

These decisions are not uniform. It appears that the courts have attempted to enable the wife to bring a suit for divorce when there is justification for so doing even though the husband controls the financial resources of the family. At the same time the husband is protected against charges for suits which are either not supported by reasonable evidence or are not carried through.

<sup>151</sup> *Graves v. Graves*, 36 Iowa 310; *Finn v. Finn*, 62 Iowa 482.

<sup>152</sup> *Laws of Iowa*, 1840 (Extra Session), Ch. 14; *Laws of Iowa*, 1841–1842, Chs. 2, 13, 18, 37, 40, 41, 77, 85; *Laws of Iowa*, 1842–1843 (Local Laws), Ch. 77; *Laws of Iowa*, 1845–1846, Ch. 86.

<sup>153</sup> *United States Census Report, Marriage and Divorce, 1867–1906*, Part II, p. 623.

For further discussion of the mother's claim to the custody of her children in case of divorce see Chapter VIII. See also Patton's *History of Divorce Legislation in Iowa*.

<sup>154</sup> *United States Census Report, Marriage and Divorce, 1867–1906*, Part I, pp. 437, 485.

<sup>155</sup> *Laws of Iowa*, 1842–1843 (Local Laws), Ch. 77.

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<sup>156</sup> Willcox's *The Divorce Problem*, p. 35, in the *Columbia University Studies in History, Economics and Public Law*, Vol. I.

<sup>157</sup> Patton's *History of Divorce Legislation in Iowa*, p. 32.

<sup>158</sup> *United States Census Report, Marriage and Divorce, 1867-1906*, Part II, pp. 576, 577. See also Part I, pp. 62-65.

<sup>159</sup> *United States Census Report, Marriage and Divorce, 1867-1906*, Part I, pp. 92, 93, 94, 95.

Four States—Virginia, Alabama, Mississippi, and North Carolina—showed a larger per cent of divorces granted to the husband than to the wife in 1887-1906, while seven showed a preponderance in favor of the husbands during the period between 1867 and 1887. South Carolina has had no divorces since 1878. The State with the highest per cent of divorces granted to women from 1887 to 1906, was not a western Commonwealth, as might be expected, but Rhode Island, where women were granted 78.2 per cent of the divorces. Iowa ranked third in this respect, with 75.7 per cent of the divorces granted to wives. Utah was second with 77.5 per cent.

<sup>160</sup> *United States Census Report, Marriage and Divorce, 1867-1906*, Part I, pp. 86, 87, 88, 89, 94, 95.

In this table only the statistics concerning the four most important causes of divorce are given.

<sup>161</sup> *United States Census Report, Marriage and Divorce, 1867-1906*, Part I, pp. 92, 93.

During the period between 1867 and 1886 neglect to provide was the cause specified in one-tenth of one per cent of the divorces granted to wives. This was not legal grounds for a divorce to a husband.

### CHAPTER VIII

<sup>162</sup> *Laws of Iowa, 1838-1839*, pp. 47, 347.

<sup>163</sup> *Code of 1851*, Ch. 88.

<sup>164</sup> *Hunt v. Hunt*, 4 Greene 216, at 222, 223.

<sup>165</sup> *Cain v. Devitt*, 8 Iowa 116; *Revision of 1860*, Sec. 2543.

The father was not liable, however, for necessities furnished an adult, unmarried daughter who lived at his home although he made no objection.—*Blachley v. Laba*, 63 Iowa 22.

<sup>166</sup> *Cole v. Cole*, 23 Iowa 433; *Code of 1873*, Secs. 2241, 2242, 2243; *Code of 1897*, Secs. 3192, 3193, 3194.

For decisions concerning this equal guardianship, see *The State v. Kirkpatrick*, 54 Iowa 373. See also *Laws of Iowa, 1882*, Ch. 40.

<sup>167</sup> *Ostheimer v. Ostheimer*, 125 Iowa 523; *Caldwell v. Caldwell*, 141 Iowa 192; *The State v. Dewey*, 155 Iowa 469.

<sup>168</sup> *Laws of Iowa*, 1913, Ch. 31.

<sup>169</sup> *Laws of Iowa*, 1839-1840, Ch. 24; *Code of 1851*, Secs. 855, 1415-1418; *Revision of 1860*, Ch. 58; *Black Hawk County v. Cotter*, 32 Iowa 125.

## CHAPTER IX

<sup>170</sup> *House Journal*, 1843-1844, February 1, 1844, p. 170.

Among the eleven who were opposed to the motion which killed this bill was James W. Grimes, afterwards Governor of Iowa.

<sup>171</sup> *Laws of Iowa*, 1845-1846, Ch. 5.

The date of this act was January 2, 1846.

<sup>172</sup> *Code of 1851*, Secs. 1192, 1207, 1304, 1447-1450, 1453.

<sup>173</sup> *McCrary v. Foster*, 1 Iowa 271.

<sup>174</sup> *Code of 1851*, Secs. 458, 1192.

<sup>175</sup> *Suiter v. Turner et al.*, 10 Iowa 517, at 521; *Peck v. Hendershott*, 14 Iowa 40.

<sup>176</sup> *Revision of 1860*, Secs. 2499-2504.

<sup>177</sup> *Ticonic Bank v. Harvey et al.*, 16 Iowa 141; *Laing v. Cunningham et al.*, 17 Iowa 510. See also *Duncan v. Roselle et ux.*, 15 Iowa 501.

<sup>178</sup> *Sunderland et al. v. Sunderland et al.*, 19 Iowa 325.

<sup>179</sup> *Jones v. Jones*, 19 Iowa 236. *Logan v. Hall, Administrator*, 19 Iowa 491.

<sup>180</sup> *Goodrich v. Munger et al.*, 30 Iowa 343, at 349.

<sup>181</sup> *Miller v. Wetherby*, 12 Iowa 415.

<sup>182</sup> *Woolheather v. Risley*, 38 Iowa 486.

<sup>183</sup> *Daily Evening Press* (Iowa City), May 17, 1871.

<sup>184</sup> *Code of 1873*, Secs. 2202, 2204, 2206, 2211.

<sup>185</sup> *Lower v. Lower*, 46 Iowa 525.

<sup>186</sup> *Stamy v. Laning et al.*, 58 Iowa 662; *Jones v. Brandt*, 59 Iowa 332.

<sup>187</sup> *The Woman's Standard*, Vol. I, No. 3, November, 1886; Vol. I, No. 10, June, 1887.



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<sup>188</sup> Gilbert, Hedge & Co. v. Glenny *et al.*, 75 Iowa 513; *Code of 1873*, Sec. 2211. See also Mewhirter v. Hatten, 42 Iowa 288.

<sup>189</sup> Hoag & Steere v. Martin *et al.*, 80 Iowa 714.

<sup>190</sup> Jones v. Storms *et al.*, 90 Iowa 369; Garr, Scott & Co. v. Klein *et ux.*, 93 Iowa 313.

<sup>191</sup> *Code of 1897*, Secs. 3153, 3162.

<sup>192</sup> Clark Bros. v. Ford, 126 Iowa 460.

<sup>193</sup> *In re* Estate of Kennedy, 154 Iowa 460.

<sup>194</sup> Miller, Watt & Co. v. Mercer, 170 Iowa 166.

<sup>195</sup> *Laws of Iowa*, 1838-1839, p. 485, Sec. 44.

<sup>196</sup> *Laws of Iowa*, 1838-1839, pp. 473, 484-486.

Illegitimate children inherited from the mother, but not from the father unless definitely recognized by him.

<sup>197</sup> *Code of 1851*, Secs. 1390, 1394, 1421; *Laws of Iowa*, 1852-1853, Ch. 61, Sec. 1.

<sup>198</sup> *Code of 1851*, Secs. 1407, 1410, 1411, 1412, 1413.

<sup>199</sup> Ralston *et al.* v. Ralston, 3 Greene 535.

<sup>200</sup> Ralston v. Ralston *et al.*, 3 Greene 533.

<sup>201</sup> Rowland v. Rowland *et al.*, 4 Greene 183.

<sup>202</sup> *Laws of Iowa*, 1854-1855, Chs. 12, 13.

<sup>203</sup> Clausen, Guardian, v. La Franz, 1 Iowa 226.

<sup>204</sup> *Laws of Iowa*, 1858, Ch. 63.

<sup>205</sup> *Revision of 1860*, Secs. 2361, 2422, 2477, 2490; *Laws of Iowa*, 1862, Ch. 151.

<sup>206</sup> McMenomy v. McMenomy, 22 Iowa 148.

<sup>207</sup> *Laws of Iowa*, 1862, Ch. 22.

<sup>208</sup> Meyer v. Meyer *et al.*, 23 Iowa 359; Dodds *et al.* v. Dodds, 26 Iowa 311; Sully v. Neberball *et al.*, 26 Iowa 338; Cain v. Cain *et al.*, 23 Iowa 31.

<sup>209</sup> *Laws of Iowa*, 1868, Ch. 50; *Laws of Iowa*, 1872, Ch. 51.

<sup>210</sup> *In re* Estate of Jacob Davis, 36 Iowa 24.

<sup>211</sup> Mock v. Watson *et al.*, 41 Iowa 241; Felch v. Finch, 52 Iowa 563; *In re* Estate of Dennis, 67 Iowa 110; Thomas v. Hanson *et al.*, 44 Iowa 651.

In 1914 the exempt personal property of the decedent, the Supreme Court ruled, should be held exempt in the hands of the widow and the expenses of the last sickness, etc., together with the allowance for the widow's maintenance during the year, should be paid out of the remaining personal property.—*In re Estate of Smith*, 165 Iowa 614.

<sup>212</sup> *Laws of Iowa*, 1870, Ch. 7.

<sup>213</sup> *Code of 1873*, Secs. 2436, 2440, 2441, 2442.

<sup>214</sup> *Code of 1873*, Secs. 2451, 2452; *Revision of 1860*, Sec. 2435.

<sup>215</sup> *Code of 1873*, Secs. 2455, 2456, 2457, 2458.

<sup>216</sup> *McGuire v. Brown et al.*, 41 Iowa 650; *Jones v. Jones et al.*, 47 Iowa 337.

<sup>217</sup> *Buzick v. Buzick et al.*, 44 Iowa 259.

<sup>218</sup> *Senate Journal*, 1880, p. 126.

<sup>219</sup> *Ward v. Wolf et al.*, 56 Iowa 465; *Samson, Administrator, v. Samson et al.*, 67 Iowa 253; *Senate Journal*, 1886, pp. 80, 405, 729; *House Journal*, 1886, p. 717.

<sup>220</sup> *Rittgers v. Rittgers et al.*, 56 Iowa 218; *Bentley v. Bentley*, 112 Iowa 625.

See also *Howard et al. v. Smith et al.*, 78 Iowa 73.

<sup>221</sup> *Phillips v. Carpenter*, 79 Iowa 600; *In re Estate of Cook*, 126 Iowa 158; *Code of 1897*, Sec. 3313.

<sup>222</sup> *Baldwin et al. v. Hill et al.*, 97 Iowa 586.

In case the widow was the administratrix such consent was taken for granted if she acquiesced in the sales made in accordance with the will.—*Goldizen v. Goldizen et al.*, 107 Iowa 280.

<sup>223</sup> *Laws of Iowa*, 1896, Ch. 84; *Code of 1897*, Sec. 2906; *Nicholson v. Aney*, 127 Iowa 278; *Dowling & Allgood v. Wood*, 125 Iowa 244; *Laws of Iowa*, 1906, Ch. 148.

<sup>224</sup> *Laws of Iowa*, 1913, Ch. 280.

<sup>225</sup> *Meyer, Executor, v. Weiler*, 121 Iowa 51; *Wright v. Breckenridge*, 125 Iowa 197.

<sup>226</sup> *Conn v. Conn et al.*, 58 Iowa 747; *Schlarb et al. v. Holderbaum et al.*, 80 Iowa 394.

<sup>227</sup> *Laws of Iowa*, 1839–1840, Ch. 28, Secs. 20–28.

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<sup>228</sup> *Davis v. O'Ferrall*, 4 Greene 168.

<sup>229</sup> *Goddard, as trustee, etc. v. Beebe*, 4 Greene 126.

<sup>230</sup> *Butler and Robinson v. Rickets*, 11 Iowa 107; *Westfall et ux. v. Lee et al.*, 7 Iowa 12.

<sup>231</sup> *Laws of Iowa*, 1858, Ch. 33.

<sup>232</sup> *McHenry v. Day et ux.*, 13 Iowa 445; *Simms v. Hervey et ux.*, 19 Iowa 273.

<sup>233</sup> *Robertson v. Robertson*, 25 Iowa 350.

<sup>234</sup> *Stoddard v. Cutcompt et al.*, 41 Iowa 329.

<sup>235</sup> *Code of 1873*, Sec. 2203.

<sup>236</sup> *Linton v. Crosby et al.*, 54 Iowa 478.

<sup>237</sup> *Shane v. McNeill et al.*, 76 Iowa 459.

<sup>238</sup> *Newberry v. Newberry*, 114 Iowa 704.

In 1892, a contract between husband and wife providing for the division of property in case of a divorce was held valid.—*Nieukirk v. Nieukirk*, 84 Iowa 367.

It is difficult to see why a contract looking toward divorce should be valid while one concerned with a simple division of the property before death is not.

<sup>239</sup> *Baker v. Syfritt*, 147 Iowa 49.

<sup>240</sup> *Martin v. Martin*, 65 Iowa 255; *Blake v. Blake*, 7 Iowa 46.

<sup>241</sup> *Cruise, Guardian, v. Billmire*, 69 Iowa 397.

<sup>242</sup> *Swartz v. Andrews*, 137 Iowa 261; *Laws of Iowa*, 1902, Ch. 237; *Sawyer v. Biggart*, 114 Iowa 489.

The act of 1902 was held to refer only to joint acts.

<sup>243</sup> *Supplement to the Code of Iowa, 1913*, Sec. 2942-f. See also *Laws of Iowa*, 1904, Ch. 118; *Laws of Iowa*, 1902, Ch. 237.

<sup>244</sup> *Baird v. Connell*, 121 Iowa 278.

<sup>245</sup> *Pitkin v. Peet, Executor, et al.*, 87 Iowa 268; *Fisher v. Koontz, Administrator, et al.*, 110 Iowa 498.

<sup>246</sup> *Nesmith v. Platt et al.*, 137 Iowa 292.

<sup>247</sup> *Weis v. Bach*, 146 Iowa 320; *In re Estate of Johnson*, 154 Iowa 118.

<sup>248</sup> *Toliver et al. v. Morgan et al.*, 75 Iowa 619.

<sup>249</sup> *Levins v. Sleator*, 2 Greene 604.

The court ruled that a divorce granted by the legislature in 1843 was valid and dower right was cancelled.

<sup>250</sup> *Laws of Iowa*, 1911, Ch. 159; *Laws of Iowa*, 1913, Ch. 281.

<sup>251</sup> *Stidger v. Evans*, 64 Iowa 91; *Troutman v. Gowing*, 16 Iowa 415.

<sup>252</sup> *Braun v. Mathieson*, 139 Iowa 409.

<sup>253</sup> *Byington v. Carlin et al.*, 146 Iowa 301.

<sup>254</sup> *Stewart & Company v. Whicher et al.*, 168 Iowa 269.

<sup>255</sup> *Kuhn v. Kuhn*, 125 Iowa 449.

This is in accord with the decision formerly cited that a wife does not *inherit* from her husband.

<sup>256</sup> *Hamilton et al. v. Smith et al.*, 57 Iowa 15; *Wallace v. Wallace*, 137 Iowa 169; *Collins v. Smith et al.*, 144 Iowa 200.

<sup>257</sup> *Beck v. Beck et al.*, 64 Iowa 155.

<sup>258</sup> *Laws of Iowa*, 1838-1839, p. 41.

<sup>259</sup> *Painter v. Weatherford*, 1 Greene 97.

<sup>260</sup> *Greenough v. Wiggington and Wife*, 2 Greene 435; *Laws of Iowa*, 1845-1846, Ch. 5.

<sup>261</sup> *Code of 1851*, Secs. 1207, 1454, 1456, 1459.

<sup>262</sup> *Blake v. Blake*, 7 Iowa 46 at 53, 54, 55.

The wife had agreed to give up her dower in a large amount of property for less than two dollars a week.

<sup>263</sup> *McMullen v. McMullen*, 10 Iowa 412.

This was an appeal from the Linn County District Court.

It appears from these two decisions that the wife's contract was to be enforced when it was to her disadvantage while it was not enforced when it was in her favor.

<sup>264</sup> *Whitecarver et ux. v. Bonney*, 9 Iowa 480; *Kramer v. Conger*, 16 Iowa 434.

<sup>265</sup> *Jones v. Crosthwaite et ux.*, 17 Iowa 393; *Laing v. Cunningham et al.*, 17 Iowa 510.

In this connection the following modest announcement found in an early paper may be of interest:

“MILLENERY”

“Miss H. J. Riccord, respectfully informs the public that she has com-

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menced the above business in its various branches, and will attend promptly to all business in her line.

Residence at her father's, north of the National Hotel.'—*The Iowa City Standard*, September 17, 1842.

<sup>266</sup> *Laws of Iowa*, 1858, Ch. 34.

<sup>267</sup> *Revision of 1860*, Sec. 2771, footnote pp. 489, 490.

<sup>268</sup> *Revision of 1860*, Secs. 2772–2774, 2933.

<sup>269</sup> *Wolff v. Van Metre et al.*, 19 Iowa 134; *Reed v. King and King*, 23 Iowa 500; *Simms v. Hervey et ux.*, 19 Iowa 273.

<sup>270</sup> *Laws of Iowa*, 1870, Ch. 126.

The appearance of women in the business world, however, was still infrequent enough to attract attention as is evidenced by the following comment in a newspaper in 1871: "Pella has a lady who buys and sells produce and makes money."—*Daily Evening Press* (Iowa City), May 2, 1871.

<sup>271</sup> *Code of 1873*, Secs. 2211, 2213; *Code of 1897*, Sec. 3164. *Spafford v. Warren et al.*, 47 Iowa 47, at 51.

It must be remembered, however, that since the adoption of the *Code of 1873*, married women have not been allowed to make contracts with their husbands concerning the distributive share of either.—*Code of 1873*, Sec. 2203.

<sup>272</sup> *Van Metre v. Wolf*, 27 Iowa 341; *Guthrie v. Howard et ux.*, 32 Iowa 54. See also *Mitchell v. Smith et ux.*, 32 Iowa 484.

<sup>273</sup> *McLaren v. Hall et al.*, 26 Iowa 297.

<sup>274</sup> *Chamberlain v. Robertson*, 31 Iowa 408.

<sup>275</sup> *Nicholas & Shepard v. Higby et al.*, 35 Iowa 401; *In re Alexander*, 37 Iowa 454.

<sup>276</sup> *Sweazy v. Kammer*, 51 Iowa 642, at 645.

<sup>277</sup> *Hatcher et al. v. Day et al.*, 53 Iowa 671.

<sup>278</sup> *Senate Journal*, 1892, pp. 133, 358, 454.

<sup>279</sup> *Sprague, Warner & Company v. Benson et al.*, 101 Iowa 78; *Garner et al. v. Fry et al.*, 104 Iowa 515.

<sup>280</sup> *Woods v. Allen*, 109 Iowa 484.

<sup>281</sup> *Cox v. Collis*, 109 Iowa 270.

<sup>282</sup> *Heacock v. Heacock*, 108 Iowa 540; *Hoaglin v. Henderson & Company*, 119 Iowa 720; *Code of 1873*, Secs. 2204, 2211, 2213.

<sup>288</sup> *In re Estate of Deaner*, 126 Iowa 701; *McElhaney v. McElhaney*, 125 Iowa 279.

<sup>284</sup> *Hostetler v. Eddy*, 128 Iowa 401.

<sup>285</sup> *Code of 1851*, Secs. 1245, 1246; *Revision of 1860*, Secs. 2277, 2278; *Code of 1873*, Secs. 1988, 1989; *Code of 1897*, Secs. 2972, 2973.

<sup>286</sup> *Code of 1851*, Secs. 1247, 1248, 1263, 1264; *Revision of 1860*, Secs. 2295, 2296; *Code of 1873*, Secs. 2007, 2008; *Code of 1897*, Secs. 2973, 2985; *Arnold v. Waltz*, 53 Iowa 706.

<sup>287</sup> *Williams v. Swetland*, 10 Iowa 51.

This provision was entirely distinct from the dower right of the wife.

<sup>288</sup> *Morris v. Sargent et al.*, 18 Iowa 90.

The laws concerning the procedure to certify a wife's signature, it will be remembered, were not very strict at this time.

<sup>289</sup> *Wilson v. Christopherson et ux.*, 53 Iowa 481.

<sup>290</sup> *Stewart v. Brand*, 23 Iowa 477.

<sup>291</sup> *Whitehead v. Conklin et al.*, 48 Iowa 478; *Wold & Olson v. Berkholtz*, 105 Iowa 370; *Code of 1873*, Secs. 2007, 2008; *Peebles and White v. Bunting*, 103 Iowa 489.

The wife might occupy the homestead even after remarriage, in spite of the claims of the heirs.—*Nicholas v. Purczell*, 21 Iowa 265.

<sup>292</sup> *Burns et al. v. Keas et al.*, 21 Iowa 257.

<sup>293</sup> *Laws of Iowa*, 1838–1839, pp. 480, 487.

<sup>294</sup> *Laws of Iowa*, 1841–1842, Ch. 20, p. 17. See also *Laws of Iowa*, 1843–1844, p. 69.

<sup>295</sup> *Code of 1851*, Sec. 1304; *Code of 1897*, Sec. 3288.

<sup>296</sup> *In re Estate of O'Brien*, 63 Iowa 622.

<sup>297</sup> *Code of 1851*, Sec. 1207; *Code of 1897*, Sec. 3270.

<sup>298</sup> *Laws of Iowa*, 1838–1839, p. 456; *Laws of Iowa*, 1841–1842, Ch. 98.

<sup>299</sup> *The Iowa Standard* (Bloomington), April 29, 1841.

<sup>300</sup> *The Iowa Standard* (Iowa City), May 23, 1844.

Similar announcements are to be found in newspapers down to the present, although more seldom in late years.

<sup>301</sup> *Code of 1873*, Secs. 2207, 2208; *Rawson and Rice v. Spangler*, 62 Iowa 59.

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<sup>302</sup> *Vanduzer v. Vanduzer*, 70 Iowa 614; *Lawrence v. Brown*, 91 Iowa 342.

<sup>303</sup> *Senate Journal*, 1894, p. 249.

<sup>304</sup> *House Journal*, 1902, pp. 121, 440, 441; *House Journal*, 1904, pp. 143, 233.

<sup>305</sup> *House Journal*, 1906, pp. 34, 97, 203, 204, 287; *Senate Journal*, 1907, p. 20; *House Journal*, 1907, pp. 632, 633, 1009; *Laws of Iowa*, 1907, Ch. 170.

<sup>306</sup> *Supplement to the Code of Iowa, 1907*, Secs. 4775-a, 4775-b.

<sup>307</sup> *Baker v. Oughton*, 130 Iowa 35.

<sup>308</sup> *The State v. Stout*, 139 Iowa 557.

<sup>309</sup> *Code of 1851*, Secs. 1447-1462.

For a case decided in accordance with section 1455, see *Rodemeyer v. Rodman*, 5 Iowa 426. See also *Revision of 1860*, Sec. 2507; *Code of 1873*, Sec. 2214; *Code of 1897*, Sec. 3165; *Laws of Iowa*, 1913, Ch. 271.

<sup>310</sup> *Smedley v. Felt*, 41 Iowa 588; *McCormick v. Muth et ux.*, 49 Iowa 536; *Martin Bros. v. Vertres*, 130 Iowa 175.

<sup>311</sup> *Courtright v. Courtright*, 53 Iowa 57. See also *Hayward v. Jackman*, 96 Iowa 77; *Sherman v. King et ux.*, 51 Iowa 182.

<sup>312</sup> *Fitzgerald v. McCarty et al.*, 55 Iowa 702; *Davis v. Ritchey*, 55 Iowa 719.

<sup>313</sup> *Haggard v. Holmes et al.*, 90 Iowa 308.

<sup>314</sup> *Neasham v. McNair*, 103 Iowa 695; *Black Hawk County v. Scott*, 111 Iowa 190; *Vose v. Myott*, 141 Iowa 506.

In a decision handed down in 1875, however, a contract between the guardian of an insane husband and the wife that she should receive pay for caring for the husband was void because she owed the service without pay.—*Grant v. Green*, 41 Iowa 88.

<sup>315</sup> *Boss, Administrator, v. Jordan*, 118 Iowa 204; *The Aultman Engine and Thresher Co. v. Greenlee*, 134 Iowa 368.

<sup>316</sup> *O'Neil v. Cardina*, 159 Iowa 78.

<sup>317</sup> *Wihelm et al. v. Mertz et al.*, 4 Greene 54.

<sup>318</sup> *Reunecker v. Scott*, 4 Greene 185.

<sup>319</sup> *Cheuvete et al. v. Mason*, 4 Greene 231.

<sup>320</sup> *Revision of 1860*, Secs. 2499-2514; *Laws of Iowa*, 1845-1846, Ch. 5.

<sup>321</sup> *Duncan v. Roselle et ux.*, 15 Iowa 501.

<sup>322</sup> *Laws of Iowa*, 1866, Ch. 24.

<sup>323</sup> *Mitchell & Sons v. Sawyer and Wife*, 21 Iowa 582.

<sup>324</sup> *Laws of Iowa*, 1870, Ch. 126.

<sup>325</sup> *Patterson v. Spearman, Clark, and Seeley*, 37 Iowa 36.

<sup>326</sup> *Ottumwa Daily Democrat*, November 2, 1886.

<sup>327</sup> *Code of 1873*, Secs. 2203, 2212.

Three cases involving this question of the notice of ownership are to be found in the court reports.—*Myers v. McDonald, Sheriff*, 27 Iowa 391; *Stewart v. Bishop et al.*, 33 Iowa 584; *Schmidt v. Holtz*, 44 Iowa 446.

<sup>328</sup> *Miller v. Hollingsworth*, 36 Iowa 163.

<sup>329</sup> *Hamilton v. Lightner et al.*, 53 Iowa 470.

<sup>330</sup> *Hoag & Steere v. Martin et al.*, 80 Iowa 714.

<sup>331</sup> *Laws of Iowa*, 1894, Ch. 95; *Laws of Iowa*, 1896, Ch. 84.

<sup>332</sup> *Code of 1897*, Secs. 3155, 3156.

<sup>333</sup> *The County of Delaware v. McDonald*, 46 Iowa 170; *Wapello County v. Eikelberg*, 140 Iowa 736.

<sup>334</sup> *Tibbetts v. Wadden*, 94 Iowa 173 at 174.

<sup>335</sup> *Skillman v. Wilson*, 146 Iowa 601.

## CHAPTER X

<sup>336</sup> Trained nursing was classed as personal or domestic service in 1900 and as a profession in 1910. At the former date there were only 160 women in Iowa in this profession who were classed as trained nurses: ten years later the number is given as 1,710.—*Twelfth Census of the United States*, 1900, Vol. II, p. 522; *Thirteenth Census of the United States*, 1910, Vol. IV, p. 122.

<sup>337</sup> *Ninth Census of the United States*, 1870, Vol. I, pp. 686-690; *Tenth Census of the United States*, 1880, Vol. I, pp. 712, 713, 792-794; *Compendium of the Eleventh Census*, 1890, Part III, pp. 408-410; *Twelfth Census of the United States*, 1900, Vol. II, pp. 520-524; *Thirteenth Census of the United States*, 1910, Vol. IV, pp. 110-123; *Census of Iowa*, 1915, pp. 552, 553.



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<sup>338</sup> *The American Labor Legislation Review*, Vol. VI, p. 359.

<sup>339</sup> *Laws of Iowa*, 1874, Ch. 31, Sec. 5; *Laws of Iowa*, 1892, Ch. 47; *Code of 1897*, Sec. 4999; *Laws of Iowa*, 1902, Ch. 97.

<sup>340</sup> *Code of 1897*, Sec. 2448; *Laws of Iowa*, 1906, Ch. 103.

The provision as to dangerous employments applies also to boys under sixteen.

<sup>341</sup> *Laws of Iowa*, 1902, Ch. 149.

<sup>342</sup> *The American Labor Legislation Review*, Vol. VI, pp. 359, 372-381.

The other States are Alabama, Florida, Nevada, New Mexico, and West Virginia.

<sup>343</sup> *Senate Bills*, 1917, Nos. 164, 376; *House Bills*, 1917, No. 257; *Index and History of Senate and House Bills*, 1917, pp. 90, 142, 296.

See also *House Journal*, 1915, pp. 191, 192, 999, 1000.

<sup>344</sup> *Supplement to the Code of Iowa, 1913*, Sec. 2477.

<sup>345</sup> *Biennial Report of the Bureau of Labor Statistics*, 1914, pp. 112-185; 1916, pp. 180-303.

## CHAPTER XII

<sup>346</sup> Channing's *A History of the United States*, Vol. I, pp. 370-377.

<sup>347</sup> *Maryland Historical Magazine*, Vol. II, pp. 221, 224, 379.

<sup>348</sup> Warner's *Library of the World's Best Literature*, Vol. I, p. 87; McLaughlin and Hart's *Cyclopedia of American Government*, Vol. III, p. 694; *Writings of Thomas Paine*, Vol. I, p. 330; Wollstonecraft's *A Vindication of the Rights of Woman* (Camelot Series), p. xiv.

<sup>349</sup> Greene's *Results of the Woman-Suffrage Movement in The Forum*, Vol. XVII, pp. 413, 414.

<sup>350</sup> Martineau's *Society in America*, Vol. II, p. 259.

<sup>351</sup> Hart's *Slavery and Abolition*, p. 210; Garrison's *William Lloyd Garrison*, Vol. II, pp. 353, 368-373; Jacobi's "*Common Sense*" *Applied to Woman Suffrage*, p. 5.

<sup>352</sup> Thorpe's *The Political Value of State Constitutional History*, in *The Iowa Journal of History and Politics*, Vol. I, p. 30.

<sup>353</sup> McLaughlin and Hart's *Cyclopedia of American Government*, Vol. III, p. 695; *The Woman's Standard*, Vol. V, No. 9, May, 1891.

<sup>354</sup> *The Atlantic Monthly*, Vol. XI, p. 479.

<sup>355</sup> Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. IV, pp. 994-1000.

<sup>356</sup> McLaughlin and Hart's *Cyclopedia of American Government*, Vol. III, pp. 694, 695; *The American Political Science Review*, Vol. XII, pp. 102-105; *Information*, Vol. III, p. 325; Catt's *Woman Suffrage by Federal Constitutional Amendment*, pp. 93, 94; *Woman Suffrage Amendment Proceedings in the United States Senate*, July 31, 1913; Ogg's *National Progress, 1907-1917*, pp. 152, 153; *The Survey*, Vol. XXXIX, p. 144; *The American Year Book*, 1917, pp. 180-182; *The Literary Digest*, Vol. LVII, No. 6, p. 14; *The Des Moines Register*, November 23, 30, 1918.

The Territory of Washington enfranchised its women citizens in 1883, but the act was declared unconstitutional by the Territorial Supreme Court. The amendment was later rejected by a State vote.—*The Outlook*, Vol. LXV, p. 430; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. IV, pp. 967-969.

Vermont, in 1917, permitted women tax-payers to vote for certain town officers and on appropriations.

<sup>357</sup> Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. II, pp. 648-689.

<sup>358</sup> Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. II, pp. 333, 363; *The Congressional Globe*, 1st Session, 41st Congress, p. 72.

It is said that Senator Harlan of Iowa was in favor of this amendment, but he did not publicly advocate its passage.

<sup>359</sup> *House Reports*, 1st Session, 48th Congress, Vol. V, No. 1330, pp. 4-7; Horack's *Equal Suffrage in Iowa*, pp. 23, 24; Catt's *Woman Suffrage by Federal Constitutional Amendment*, Introduction; *Hearing Before the Committee on Rules of the House of Representatives*, 2nd Session, 63rd Congress, 1913, p. 11.

<sup>360</sup> Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. IV, pp. 110, 111; Catt's *Woman Suffrage by Federal Constitutional Amendment*, Introduction.

Among the yeas was Senator Wilson of Iowa. Senator William B. Allison was among those absent.

<sup>361</sup> *Congressional Record*, 3rd Session, 63rd Congress, pp. 1483, 1484.

<sup>362</sup> *Information*, Vol. II, p. 492.

<sup>363</sup> *The Review of Reviews*, Vol. LVII, p. 137; *Congressional Record*, 2nd Session, 65th Congress, pp. 836, 11914, 11984. For an account of the vote see *The Searchlight on Congress*, Vol. II, Nos. 11-12, p. 9.

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Among the negative votes was that of one Iowa Representative, Harry E. Hull.

<sup>364</sup> Catt's *Woman Suffrage by Federal Constitutional Amendment*, pp. 93-95; *Information*, Vol. III, p. 424; *American Year Book*, 1917, pp. 87, 91; Ray's *Woman Suffrage in Foreign Countries* in *The American Political Science Review*, Vol. XII, pp. 469-474.

### CHAPTER XIII

<sup>365</sup> *Laws of Iowa*, 1838-1839, p. 33.

<sup>366</sup> *House Journal*, 1843-1844, p. 23.

<sup>367</sup> Booth's *Reminiscences of Twenty-seven Years Ago* in *The Annals of Iowa* (First Series), Vol. IX, pp. 564, 565.

<sup>368</sup> *The Iowa Standard* (Iowa City), October 24, 1844. See also the *Journal of the Constitutional Convention*, 1857, pp. 241, 242.

<sup>369</sup> *Constitution of Iowa*, 1844, Art. II, Sec. 1, Art. III, Sec. 1; *Constitution of Iowa*, 1857, Art. II, Sec. 1.

<sup>370</sup> *Code of 1851*, Secs. 258, 259, 2631.

<sup>371</sup> *House Journal*, 1852-1853, pp. 82, 83.

<sup>372</sup> Aurner's *History of Education in Iowa*, Vol. II, p. 197.

<sup>373</sup> *Journal of the Constitutional Convention*, 1857, pp. 240-243.

Mr. Arthur Springer is authority for the statement that his father, Mr. Francis Springer, was one of those in favor of woman suffrage in this convention in 1857.

<sup>374</sup> *The Woman's Standard*, Vol. VIII, No. 11, July, 1894; Bloomer's *Life and Writings of Amelia Bloomer*, pp. 211, 212.

Mrs. D. C. Bloomer, one of the pioneers in the woman suffrage movement, was born in New York in 1818 and came to Iowa with her husband in 1855. She became an enthusiastic advocate of the emancipation of women and, in order to accomplish this purpose, she joined the ranks of the dress reformers and adopted a combination dress of trousers and skirt which made her an object of curiosity and obscured to some extent her real contributions to the reforms of temperance and woman suffrage. She died in 1894.—Bloomer's *Life and Writings of Amelia Bloomer*, pp. 9, 67, 332.

### CHAPTER XIV

<sup>375</sup> *The State Press* (Iowa City), January 18, February 1, 1865; Fairall's *Manual of Iowa Politics*, 1881, p. 78.

<sup>276</sup> *House Journal*, 1866, pp. 188, 442.

For a summary of the proposed equal suffrage amendments see Van der Zee's *Proposed Constitutional Amendments in Iowa 1857-1909* in *The Iowa Journal of History and Politics*, Vol. VIII, pp. 192-196.

<sup>277</sup> Shambaugh's *The Constitution of the State of Iowa* (Pocket Edition, 1914), p. 105; *House Journal*, 1868, pp. 530, 605; Fairall's *Manual of Iowa Politics*, 1881, p. 80.

<sup>278</sup> *The Woman's Standard*, Vol. VIII, No. 11, July, 1894.

<sup>279</sup> *House Journal*, 1870, pp. 95, 417, 469, 470; *Senate Journal*, 1870, pp. 113, 388, 389, 394, 395; *The Woman's Standard*, Vol. VIII, No. 12, August, 1894.

This resolution included office-holding as well as voting.

<sup>280</sup> *House Journal*, 1872, pp. 191, 211, 248, 249, 377; *Senate Journal*, 1872, p. 421.

<sup>281</sup> *House Journal*, 1872, pp. 381, 479, 573.

<sup>282</sup> *Iowa State Weekly Register* (Des Moines), March 15, 1871.

<sup>283</sup> It was about this time that one of the most faithful and prominent suffrage workers of this period came to Iowa. This was Mrs. Margaret W. Campbell, who served as lecturer and organizer for the cause of political equality for many years. In 1875 Mrs. Campbell and her husband made a series of speeches on political reform throughout northern Iowa.—*The Woman's Standard*, Vol. VIII, No. 11, July, 1894.

<sup>284</sup> *Iowa State Weekly Register* (Des Moines), August 16, 1871.

<sup>285</sup> *Iowa State Weekly Register* (Des Moines), September 1, 1871.

<sup>286</sup> *Iowa State Press* (Iowa City), May 31, 1871.

<sup>287</sup> *Iowa State Press* (Iowa City), February 22, 1871.

<sup>288</sup> *Iowa State Weekly Register* (Des Moines), October 25, 1871.

<sup>289</sup> *Iowa State Weekly Register* (Des Moines), June 21, 1871.

<sup>290</sup> *Iowa State Weekly Register* (Des Moines), August 16, 1871.

For the election of the first woman county superintendent in Iowa, see Chapter XVI.

<sup>291</sup> *Iowa State Weekly Register* (Des Moines), October 25, 1872; *Iowa State Press* (Iowa City), October 16, 1872.

<sup>292</sup> Gue's *History of Iowa*, Vol. III, pp. 252, 253; *The Woman's Standard*, Vol. XI, No. 4, June, 1898; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, pp. 614-617.

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The name of this association is given in various ways—the two most frequent terms being the Iowa Woman Suffrage Association and the Iowa Woman's Suffrage Association. The Constitution not being available, the writer has adopted the former name since it corresponds with the national organizations. One of these, the National Woman Suffrage Association, was founded in 1869 under the leadership of Miss Susan B. Anthony and Mrs. Elizabeth Cady Stanton; another association organized at the same time under the leadership of Mrs. Lucy Stone was called the American Woman Suffrage Association. In 1890, these two organizations combined under the name National American Woman Suffrage Association.—Anthony and Harper's *History of Woman Suffrage*, Vol. IV, pp. 14, 164.

<sup>393</sup> *Iowa State Weekly Register* (Des Moines), October 5, 1871, March 7, 1873.

<sup>394</sup> *The Woman's Standard*, Vol. VIII, No. 11, July, 1894.

<sup>395</sup> *Iowa State Weekly Register* (Des Moines), July 3, 1874; *House Journal*, 1874, pp. 102, 251, 324, 364, 365, 462, 491; *Senate Journal*, 1874, pp. 280, 321; Fairall's *Manual of Iowa Politics*, 1881, p. 96; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, p. 621.

<sup>396</sup> From a report of speech by Samuel J. Kirkwood in the *Iowa State Weekly Register* (Des Moines), August 27, 1875.

<sup>397</sup> *Iowa State Weekly Register* (Des Moines), April 21, 1876; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, p. 621.

<sup>398</sup> *Laws of Iowa*, 1874 (Private), Joint Resolution No. 18, p. 85; Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, p. 168; *Senate Journal*, 1876, pp. 351, 352, 386, 387; *House Journal*, 1876, pp. 296, 297, 298, 396.

<sup>399</sup> *House Journal*, 1878, pp. 381, 382, 493; *House Journal*, 1880, pp. 124, 126, 637; *Senate Journal*, 1878, pp. 188, 253, 417; *Senate Journal*, 1880, pp. 385, 386, 387, 412.

<sup>400</sup> *House Journal*, 1880, pp. 39, 112, 118, 119; *Senate Journal*, 1880, pp. 59, 90, 112, 132, 171, 200, 224, 230, 256.

<sup>401</sup> Haynes's *Third Party Movements Since the Civil War*, p. 181; Fairall's *Manual of Iowa Politics*, 1881, pp. 107, 116, 124; 1883, p. 49.

The National Union Greenback Labor Convention had put an equal suffrage plank in their platform in 1880, and women from the National Woman Suffrage Association were given seats on the platform at one of the meetings. The Union Labor Party also favored equal suffrage in 1888.—Haynes's *Third Party Movements*, pp. 134, 135, 136, 208.

<sup>402</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, p. 256; *Laws of Iowa*, 1882, Joint Resolution No. 11, p. 180; *House Journal*, 1882, pp. 310, 311; *House Journal*, 1882, p. 524; *Senate Journal*, 1884, pp. 335, 336; *The Weekly Hawk-Eye* (Burlington), September 27, 1883.

<sup>403</sup> *Senate Journal*, 1884, pp. 279, 280.

The first protest against woman suffrage presented in the Iowa legislature is said to have been presented in 1884, signed "Many ladies". It was referred to the library committee, although the Senate objected to receiving a petition without signatures. It does not appear that any official record of this incident was made.—*The Annals of Iowa* (Howe's), Vol. III, p. 112.

<sup>404</sup> *The Annals of Iowa* (Howe's), Vol. III, pp. 111, 112.

<sup>405</sup> For the work of these women see *The Woman's Standard* and the *Records of the Iowa Woman Suffrage Association*.

Among the speakers from without the State were Susan B. Anthony, Mrs. Lucy Stone, and her husband Henry B. Blackwell. Their daughter, Alice Stone Blackwell, was secretary of the National American Woman Suffrage Association in 1890.—*Records of the Iowa Woman Suffrage Association*, Sixteenth to Thirty-sixth Meetings, p. 43 *et passim*.

Lieutenant Governor B. F. Gue was also in favor of equal suffrage. At his death in 1904 the Des Moines Political Equality Club adopted resolutions containing these words: "Thirty years ago when this cause had but few friends he did not shrink from being publicly identified with an unpopular measure."—*The Woman's Standard*, Vol. XVII, No. 5, July, 1904. Mrs. Gue had died in 1888.

<sup>406</sup> *The Woman's Standard*, Vol. III, No. 7, March, 1889.

The first biennial convention of the Iowa Federation of Women's Clubs was held in Cedar Rapids in May, 1895.—*The Iowa State Register* (Des Moines), May 10, 1895, p. 5.

<sup>407</sup> *The Woman's Standard*, Vol. IV, No. 4, December, 1889; *Records of the Iowa Woman Suffrage Association*, Sixteenth to Thirty-sixth Meetings, pp. 34, 46.

<sup>408</sup> *The Woman's Standard*, Vol. V, No. 5, January, 1891, No. 8, April, 1891, No. 9, May, 1891; Vol. VIII, No. 5, January, 1894, No. 6, February, 1894.

<sup>409</sup> *Records of the Iowa Woman Suffrage Association*, Sixteenth to Thirty-sixth Meetings, p. 19. This was a letter to Mrs. Margaret Campbell.

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<sup>410</sup> *The Woman's Standard*, Vol. IV, No. 8, April, 1890; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, p. 625.

<sup>411</sup> *The Woman's Standard*, Vol. VII, No. 4, December, 1891; *Records of the Iowa Woman Suffrage Association*, Sixteenth to Thirty-sixth Meetings, p. 126.

<sup>412</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 23.

The property rights of women in Iowa have been discussed in another chapter.

<sup>413</sup> *Senate Journal*, 1886, pp. 94, 108, 130, 423, 555, 556, 777; *House Journal*, 1886, pp. 108, 109, 163, 375, 563, 573.

<sup>414</sup> *The Woman's Standard*, Vol. I, No. 2, October, 1886, Vol. I, No. 3, November, 1886.

<sup>415</sup> From the *Cedar Rapids Republican*, copied in *The Woman's Standard*, Vol. I, No. 3, November, 1886, No. 7, March, 1887.

<sup>416</sup> *The Woman's Standard*, Vol. I, No. 11, July, 1887.

<sup>417</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 67, 68; *Iowa State Press* (Iowa City), October 27, 1886; *The Woman's Standard*, Vol. I, No. 4, December, 1886.

<sup>418</sup> From *The Iowa City Republican* and *The Cedar Rapids Republican*, copied in *The Woman's Standard*, Vol. II, No. 6, February, 1888.

<sup>419</sup> From the *Maquoketa Record*, copied in *The Woman's Standard*, Vol. II, No. 7, March, 1888.

For a brief account of early suffrage States, see Chapter XI.

<sup>420</sup> *House Journal*, 1888, pp. 511, 512, 513, 633, 915; *Senate Journal*, 1888, pp. 81, 642; *The Woman's Standard*, Vol. II, No. 7, March, 1888.

<sup>421</sup> *The Woman's Standard*, Vol. II, No. 8, April, 1888, No. 12, August, 1888.

<sup>422</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 182.

Wyoming was admitted as a State in 1890 with equal suffrage in its Constitution, having granted suffrage to women in 1869.

<sup>423</sup> *Senate Journal*, 1890, pp. 91, 103, 200, 215, 751, 755; *House Journal*, 1890, pp. 218, 265.

<sup>424</sup> *Records of the Iowa Woman Suffrage Association*, Sixteenth to Thirty-sixth Meetings, pp. 46, 47.

## CHAPTER XV

- <sup>425</sup> *The Woman's Standard*, Vol. IV, No. 11, July, 1890, No. 12, August, 1890.
- <sup>426</sup> *Senate Journal*, 1892, pp. 95, 210, 243; *House Journal*, 1892, pp. 97, 186, 240, 291, 330, 415, 474, 475, 476.
- <sup>427</sup> *The Woman's Standard*, Vol. VIII, No. 4, December, 1893.
- <sup>428</sup> *Senate Journal*, 1894, pp. 44, 61, 117, 158, 160, 206, 306-309, 320, 428, 794, 800; *House Journal*, 1894, pp. 58, 244, 269, 526, 627, 757, 891, 1007, 1010; *Laws of Iowa*, 1894, Ch. 39.
- <sup>429</sup> *The Woman's Standard*, Vol. VIII, No. 9, May, 1894.
- <sup>430</sup> *House Journal*, 1894, p. 758.
- <sup>431</sup> *The Iowa State Register* (Des Moines), October 25, 1895.
- <sup>432</sup> *The Iowa State Register* (Des Moines), November 15, 1895.
- <sup>433</sup> *Senate Journal*, 1896, pp. 93, 209, 753.
- <sup>434</sup> *The Iowa State Register* (Des Moines), January 29, 1897.
- <sup>435</sup> *The Iowa State Register* (Des Moines), February 5, 1897.
- <sup>436</sup> *The Iowa State Register* (Des Moines), May 28, 1897.
- <sup>437</sup> *The Woman's Standard*, Vol. IX, No. 12, February, 1897; Vol. X, No. 3, May, 1897, No. 4, June, 1897, No. 5, July, 1897, No. 6, August, 1897; Vol. XII, No. 9, November, 1899, No. 10, December, 1899.
- <sup>438</sup> *The Woman's Standard*, Vol. XIV, No. 8, October, 1901.
- <sup>439</sup> *Code of 1897*, Secs. 1131, 2747.
- <sup>440</sup> *The Woman's Standard*, Vol. X, No. 1, March, 1897; *Information*, Vol. II, p. 154. The decision was rendered on January 22, 1916.
- <sup>441</sup> *House Journal*, 1898, pp. 185, 216, 378, 379, 435; *Senate Journal*, 1898, p. 240.
- <sup>442</sup> *The Woman's Standard*, Vol. XI, No. 1, March, 1898. See also *The Iowa State Register* (Des Moines), February 11, 1898; *House Journal*, 1898, pp. 435, 436.
- <sup>443</sup> *Senate Journal*, 1900, pp. 996, 997; *House Journal*, 1900, pp. 652, 653.
- <sup>444</sup> *Senate Journal*, 1902, pp. 134, 269, 403, 404, 610.



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<sup>445</sup> *House Journal*, 1904, pp. 961, 1049, 1099, 1100, 1117, 1118; *Senate Journal*, 1904, pp. 208, 877, 967.

<sup>446</sup> *House Journal*, 1906, pp. 282, 380, 381, 601, 602, 866, 1163, 1164; *Senate Journal*, 1906, pp. 108, 764, 787.

Both Senate bills were introduced by Senator A. H. Gale of Mason City.

<sup>447</sup> *Senate Journal*, 1907, pp. 895, 896, 1343, 1348; *House Journal*, 1907, pp. 1150, 1414, 1415.

<sup>448</sup> *Senate Bills*, 1909, No. 242; *Senate Journal*, 1909, pp. 730, 731, 732; *House Journal*, 1909, p. 651.

<sup>449</sup> *House Journal*, 1911, pp. 661, 662, 663, 1193, 1229; *House Bills*, 1911, No. 544; *Senate Journal*, 1911, pp. 286, 301, 933, 1169, 1272; *Senate Bills*, 1911, Nos. 430, 432.

<sup>450</sup> *The Woman's Standard*, Vol. XXIII, Nos. 6-7, August-September, 1910.

<sup>451</sup> *Senate Journal*, 1913, pp. 226-229.

<sup>452</sup> *Laws of Iowa*, 1913, p. 426; *Senate Journal*, 1913, pp. 512, 709, 710, 889; *House Journal*, 1913, pp. 191, 366, 432, 635-637.

This did not affect section four of article three of the Constitution which disqualifies women from holding seats in the General Assembly.

<sup>453</sup> *Supplement to the Code of Iowa, 1913*, Sec. 2755.

<sup>454</sup> *Supplemental Supplement to the Code of Iowa, 1915*, Sec. 1989-a73.

The number of votes depended upon the amount of benefit to be derived from the improvement.

<sup>455</sup> *Senate Journal*, 1915, p. 339; *House Journal*, 1915, pp. 586-588.

<sup>456</sup> *House Journal*, 1915, pp. 546-565.

<sup>457</sup> *House Journal*, 1915, pp. 547, 549, 551.

<sup>458</sup> *House Journal*, 1915, pp. 1191, 1192, 2134; *Senate Journal*, 1915, pp. 1657, 1658.

<sup>459</sup> Miss Dunlap was chosen president of the Association in 1913. Her party succeeded in having the society reincorporated under the name of the Iowa Equal Suffrage Association. The women who opposed the change were led by Mrs. Rowena Stevens, who declared that the new body could not have the money belonging to the former organization. Miss Dunlap, however, secured the funds.—*The Register and Leader* (Des Moines), October 11, 1913.

<sup>460</sup> *Iowa Official Register*, 1917-1918, p. 481.

<sup>461</sup> These statistics were obtained from the following sources: *Census of Iowa*, 1915, pp. 418-433; *Iowa Official Register*, 1917-1918, pp. 462-481; and *The Des Moines Register*, October 18, 1917.

<sup>462</sup> *House Journal*, 1917, p. 1387; *Senate Journal*, 1917, pp. 1085-1087; Letter from the Secretary of State, December 12, 1918.

#### CHAPTER XVI

<sup>463</sup> *The State ex rel. v. Van Beek*, 87 Iowa 569, at 577; McClain's *Constitutional Law in the United States*, p. 287.

<sup>464</sup> *Laws of Iowa* (Extra Session), 1862, Ch. 36.

<sup>465</sup> Gue's *History of Iowa*, Vol. III, p. 255; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, p. 626; *House Journal*, 1870, p. 8.

<sup>466</sup> Gue's *History of Iowa*, Vol. III, p. 255; *Iowa Official Register*, 1917-1918, p. 103.

<sup>467</sup> Gue's *History of Iowa*, Vol. III, pp. 255, 256; *The Woman's Standard*, Vol. IV, No. 10, June, 1890, No. 11, July, 1890; *House Journal*, 1904, p. 311; *House Journal*, 1909, p. 199; *Senate Journal*, 1906, pp. 53, 102. Women frequently serve as chaplains in the legislature.

<sup>468</sup> Gue's *History of Iowa*, Vol. III, p. 256; *Biennial Report of the Warden of the Additional Penitentiary*, 1879; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, pp. 626, 627.

<sup>469</sup> *The Iowa State Register* (Des Moines), March 26, 1897.

<sup>470</sup> *The Woman's Standard*, Vol. XIII, No. 5, July, 1900.

<sup>471</sup> *The Register and Leader* (Des Moines), December 28, 1907.

<sup>472</sup> *Code of 1873*, Sec. 1435; *Code of 1897*, Secs. 2299, 2628; *Laws of Iowa*, 1882, Ch. 167.

<sup>473</sup> *Laws of Iowa*, 1898, Ch. 118, Secs. 9, 11; *Supplement to the Code of Iowa*, 1913, Sec. 2727-all; *Supplemental Supplement to the Code of Iowa*, 1915, Sec. 2727-all; *Laws of Iowa*, 1915, Ch. 114.

<sup>474</sup> *Laws of Iowa*, 1894, Ch. 41; *Laws of Iowa*, 1904, Ch. 11; *Laws of Iowa*, 1917, Ch. 405; *Supplement to the Code of Iowa*, 1907, Sec. 728; *Supplement to the Code of Iowa*, 1913, Sec. 409-c.

<sup>475</sup> *Supplement to the Code of Iowa*, 1913, Sec. 2477; *Biennial Report of the Bureau of Labor Statistics*, 1914, pp. 112-185; 1916, pp. 180-303.

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<sup>476</sup> *Supplemental Supplement to the Code of Iowa, 1915*, Sec. 879v.

<sup>477</sup> *Laws of Iowa, 1917*, Ch. 181.

<sup>478</sup> *Laws of Iowa, 1917*, Chs. 232, 290.

### CHAPTER XVII

<sup>479</sup> *Constitution of Iowa, 1857*, Art. II, Sec. 1, Art. III, Sec. 4; *Huff v. Cook*, 44 Iowa 639.

<sup>480</sup> Gue's *History of Iowa*, Vol. III, p. 256; *Iowa State Weekly Register* (Des Moines), December 15, 1869; *Laws of Iowa, 1862*, Ch. 172. Miss Addington is said to have been the first woman in the United States to hold this office.

<sup>481</sup> *Laws of Iowa, 1876*, Ch. 136; *Huff v. Cook*, 44 Iowa 639; *Iowa State Weekly Register* (Des Moines), March 24, 1876; *The History of Warren County, Iowa* (Union Historical Co.), pp. 368-372.

The case was commenced in November, 1875, and the judgment of the Circuit Court was rendered on the sixteenth of March, 1876. The act of the General Assembly was approved on March 17, 1876.

<sup>482</sup> *Huff v. Cook*, 44 Iowa 639.

<sup>483</sup> *Code of 1873*, Sec. 697.

<sup>484</sup> *Brown v. McCollum*, 76 Iowa 479.

<sup>485</sup> Aurner's *History of Education in Iowa*, Vol. II, p. 89; *Report of the Superintendent of Public Instruction*, p. 112, in the *Iowa Legislative Documents, 1898*, Vol. II; *Iowa Official Register, passim*.

<sup>486</sup> *Report of the Superintendent of Public Instruction*, p. 112, in the *Iowa Legislative Documents, 1898*, Vol. II.

<sup>487</sup> *Iowa State Weekly Register* (Des Moines), August 30, 1871.

<sup>488</sup> Quoted from the *Louisville Courier-Journal* in the *Iowa State Weekly Register* (Des Moines), April 7, 1876.

<sup>489</sup> *Laws of Iowa, 1880*, Ch. 40; *House Journal, 1880*, p. 404; *Senate Journal, 1880*, p. 462.

<sup>490</sup> *Iowa Official Register, 1881-1918, passim*.

<sup>491</sup> *Code of 1897*, Sec. 493.

<sup>492</sup> *State Democratic Press* (Iowa City), June 8, 1870.

<sup>493</sup> Information obtained from Miss Freeman.

<sup>494</sup> *The Iowa State Register* (Des Moines), July 19, August 2, November 1, 1872.

<sup>495</sup> *The Woman's Standard*, Vol. VIII, No. 12, August, 1894; Stanton, Anthony, and Gage's *History of Woman Suffrage*, Vol. III, p. 629.

<sup>496</sup> *The Woman's Standard*, Vol. VIII, No. 10, June, 1894. The women were Mrs. Walter and Mrs. Billings.

<sup>497</sup> *Code of 1897*, Sec. 2748.

<sup>498</sup> Haynes's *Third Party Movements*, p. 504; Fairall's *Manual of Iowa Politics*, 1881, p. 124.

<sup>499</sup> *The Woman's Standard*, Vol. III, No. 11, July, 1889; Fairall's *Manual of Iowa Politics*, 1883, p. 50.

<sup>500</sup> *Senate Journal*, 1870, pp. 113, 388, 389, 394, 395; 1872, p. 421; 1876, pp. 351, 352, 386, 387; 1878, pp. 188, 253, 417; 1880, p. 385; *House Journal*, 1870, pp. 95, 469; 1872, pp. 191, 248, 249, 377; 1876, pp. 296, 297, 298, 308, 396, 397; 1878, pp. 381, 382, 493; 1880, pp. 124, 126; *Laws of Iowa*, 1874, Joint Resolution No. 18, p. 85.

<sup>501</sup> *House Journal*, 1898, pp. 185, 378, 435; 1904, pp. 961, 1049, 1099, 1100, 1117; 1906, pp. 282, 380, 381, 601, 602.



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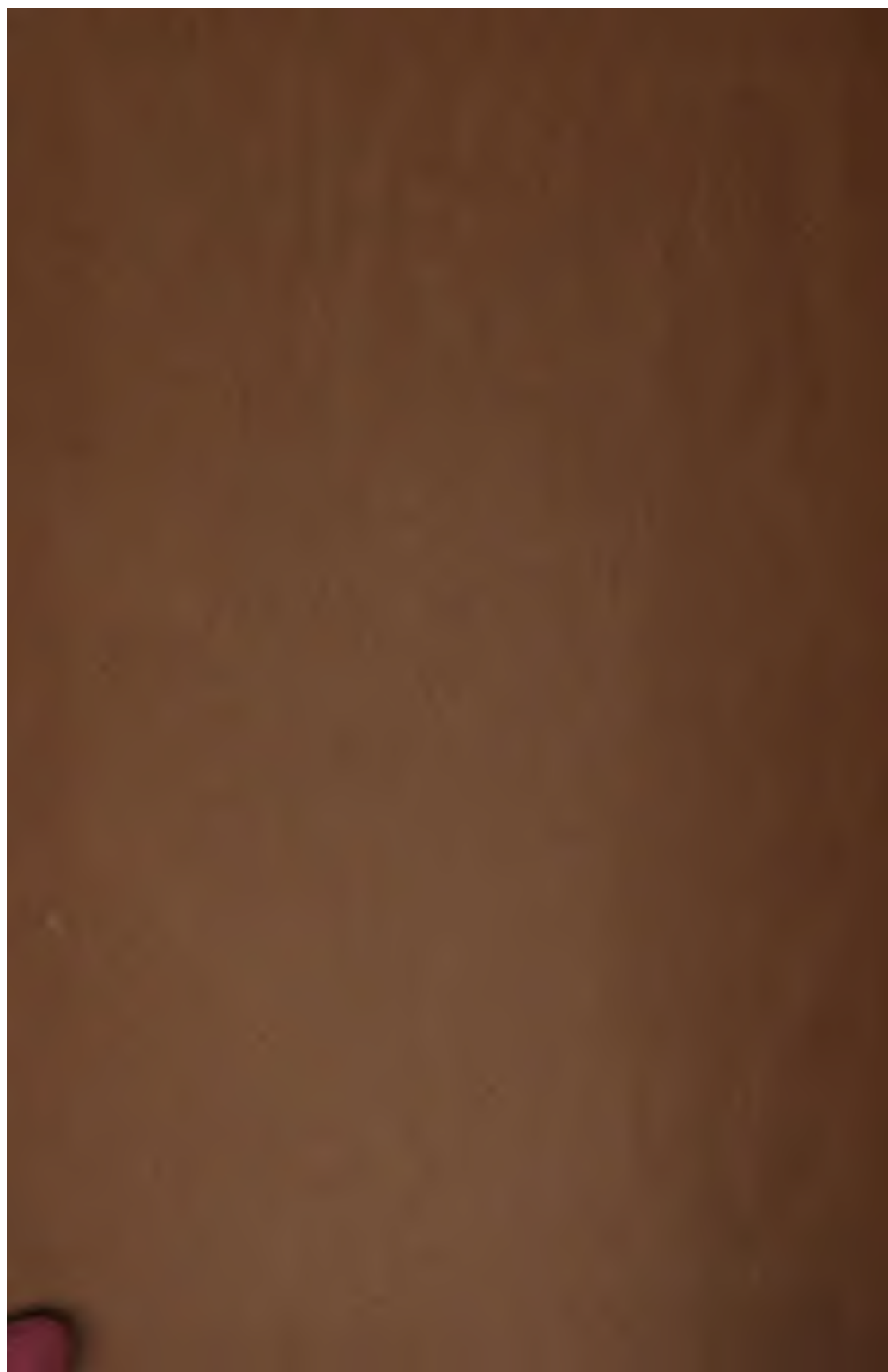














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